14788

MONTANA LEGISLATIVE HISTORY

Chapter 613 19 89

Bill H _____ S 428 Original bill & history ✓C

H. Committee on Labor and Employment Relating

Hearing Date(s)		
	Mar 16	✓C
	Mar 20	✓C
	_____	____C
	_____	____C
Date Out	Mar 22	✓C

S. Committee on Business and Industry

Hearing Date(s)		
	Feb 17	✓C
	_____	____C
	_____	____C
	Feb 17	✓C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SENATE FINAL STATUS

BY REQUEST OF SENATE STATE ADMINISTRATION COMMITTEE

2/15	INTRODUCED		
2/15	REFERRED TO STATE ADMINISTRATION		
2/16	HEARING		
2/16	COMMITTEE REPORT--BILL PASSED		
2/16	FISCAL NOTE REQUESTED		
2/18	2ND READING PASSED AS AMENDED	50	0
2/20	FISCAL NOTE RECEIVED		
2/20	FISCAL NOTE PRINTED		
2/21	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/28	REFERRED TO STATE ADMINISTRATION		
3/14	HEARING		
3/14	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/18	2ND READING CONCURRED	92	1
3/21	3RD READING CONCURRED	90	5
	RETURNED TO SENATE WITH AMENDMENTS		
4/04	2ND READING AMENDMENTS NOT CONCURRED	49	0
4/05	FREE CONFERENCE COMMITTEE APPOINTED		
4/12	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/13	2ND READING FREE CONFERENCE COMMITTEE REPORT REJECTED	48	0
	HOUSE		
4/06	FREE CONFERENCE COMMITTEE APPOINTED		
4/12	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/13	2ND READING FREE CONFERENCE COMMITTEE REPORT REJECTED	94	2
	SENATE		
4/19	FREE CONFERENCE COMMITTEE REPORT NO. 2		
4/19	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 2 ADOPTED	50	0
4/19	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 2 ADOPTED	46	0
	HOUSE		
4/19	FREE CONFERENCE COMMITTEE REPORT NO. 2		
4/20	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 2 ADOPTED	83	2
4/20	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 2 ADOPTED	93	1
4/27	SIGNED BY PRESIDENT		
4/28	SIGNED BY SPEAKER		
5/01	TRANSMITTED TO GOVERNOR		
5/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 710 EFFECTIVE DATE: 10/01/89		

SB 428 INTRODUCED BY THAYER, ET AL.
CREATE WORKERS' COMPENSATION STATE MUTUAL INSURANCE FUND
BY REQUEST OF GOVERNOR

2/15	INTRODUCED		
2/15	REFERRED TO BUSINESS & INDUSTRY		

SENATE FINAL STATUS

2/16	FISCAL NOTE REQUESTED		
2/17	HEARING		
2/17	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	41	7
2/21	3RD READING PASSED	46	4
	TRANSMITTED TO HOUSE		
2/27	FISCAL NOTE RECEIVED		
2/28	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/09	FISCAL NOTE RECEIVED		
3/10	FISCAL NOTE PRINTED		
3/16	HEARING		
3/16	FISCAL NOTE REQUESTED WITH PROPOSED AMENDMENTS		
3/16	FISCAL NOTE RECEIVED		
3/17	FISCAL NOTE PRINTED		
3/22	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED AS AMENDED	67	29
3/29	3RD READING CONCURRED	85	11
	RETURNED TO SENATE WITH AMENDMENTS		
4/04	2ND READING AMENDMENTS CONCURRED	48	1
4/06	3RD READING AMENDMENTS CONCURRED	46	1
4/13	SIGNED BY PRESIDENT		
4/17	SIGNED BY SPEAKER		
4/18	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 613		
	EFFECTIVE DATE: 04/21/89 (S3, 7, 39, 60-65)		
	SECTIONS 1, 2, 4-6, 8-38, 40-59 OF CH. 613 (SB 428) ARE EFFECTIVE UPON SIGNING OF THE EXECUTIVE ORDER UNDER SECTION 63 OR ON JANUARY 1, 1990, WHICHEVER OCCURS FIRST.		

SB 429 INTRODUCED BY THAYER, ET AL.
PROVIDE EMPLOYER MAY WITHHOLD WAGES FROM EMPLOYEE CHARGED WITH THEFT
BY REQUEST OF SENATE BUSINESS & INDUSTRY COMMITTEE

2/15	INTRODUCED		
2/15	HEARING		
2/15	REFERRED TO BUSINESS & INDUSTRY		
2/15	COMMITTEE REPORT--BILL PASSED		
2/17	2ND READING PASSED	38	0
2/20	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/21	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/16	HEARING		
3/22	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED	96	1
3/29	3RD READING CONCURRED	94	1
	RETURNED TO SENATE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS CONCURRED	50	0
4/05	3RD READING AMENDMENTS CONCURRED	49	0
4/13	SIGNED BY PRESIDENT		

SENATE BILL NO. 428

INTRODUCED BY THAYER, NATHE, THOMAS, NOBLE, MEYER, DRISCOLL, PAVLOVICH, GRADY, MAZUREK, WILLIAMS, SMITH, SQUIRES, GLASER, RAPP-SVRCEK, RUSSELL, AKLESTAD, DEVLIN, RASMUSSEN, GRINDE, MARKS

BY REQUEST OF THE GOVERNOR

IN THE SENATE

FEBRUARY 15, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
FEBRUARY 17, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1989	PRINTING REPORT.
	SECOND READING, DO PASS.
	ENGROSSING REPORT.
FEBRUARY 21, 1989	THIRD READING, PASSED. AYES, 46; NOES, 4.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 21, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
FEBRUARY 28, 1989	FIRST READING.
MARCH 22, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 28, 1989	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 29, 1989	THIRD READING, CONCURRED IN. AYES, 85; NOES, 11.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 4, 1989 — RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS CONCURRED IN.

APRIL 6, 1989 — THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

LC 0296/01

BILL NO. 428

INTRODUCED BY NATHE Thorne

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE STATE COMPENSATION MUTUAL INSURANCE FUND TO INSURE EMPLOYERS FOR WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LIABILITY; PROVIDING FOR A BOARD OF DIRECTORS; ESTABLISHING THE POWERS AND DUTIES OF THE BOARD AND THE CHIEF EXECUTIVE OFFICER OF THE STATE COMPENSATION MUTUAL INSURANCE FUND; TRANSFERRING THE OFFICE OF WORKERS' COMPENSATION JUDGE TO THE DEPARTMENT OF LABOR; AMENDING SECTIONS 2-15-1014, 2-15-1702, 2-18-103, 33-17-502, 33-18-212, 39-71-116, 39-71-201, 39-71-203, 39-71-206, 39-71-306 THROUGH 39-71-308, 39-71-403, 39-71-421, 39-71-604, 39-71-704, 39-71-901, 39-71-908, 39-71-910, 39-71-911, 39-71-913, 39-71-2303, 39-71-2307, 39-71-2308, 39-71-2321 THROUGH 39-71-2323, 39-71-2325, 39-71-2327, 39-71-2501, 39-72-201, AND 39-72-310, MCA; REPEALING SECTIONS 39-71-2301, 39-71-2302, 39-71-2304 THROUGH 39-21-2306, AND 39-71-2324, MCA; AND PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 8] grants rulemaking authority to the newly created state fund to adopt or repeal rules or amend existing rules to implement the new state compensation mutual insurance fund. The chief purposes of creating the state fund as a mutual insurer and placing it in a department other than the department of labor are:

(1) to remove the inherent conflict between the interests of the workers' compensation division in regulating all workers' compensation insurers in this state, including the state compensation insurance fund, and the interests of the state fund as a workers' compensation insurer; and

(2) to ensure the solvency of the new state fund.

The legislature recognizes that the fund actuary has determined that at June 30, 1988, a full funding deficiency of $157.3 million existed for the present state compensation insurance fund. The legislature intends that the new state compensation mutual insurance fund adopt rules in a manner that will assure the solvency of the new fund. Rates must be set on an actuarially sound basis as required by state law. To further ensure the solvency of the state fund, it is not the workers' compensation insurer of last resort, as the state fund presently is. The new state fund would not be bound to insure all employers who apply to it for workers' compensation coverage, except for state agencies. It could refuse to insure an employer it considered a poor risk.

INTRODUCED BILL
SB428

As the primary means of ensuring the solvency of the state fund, it must institute safety programs and set rates in a manner that awards employers who provide a safe working environment and penalizes employers who do not.

The legislature further intends that the new state fund institute programs to automate the processing of claims and payment of benefits. The state fund may contract out to the private sector certain claims administration and servicing functions if the state fund determines it to be cost-effective.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** **Intent and purpose of plan.** It is the intent and purpose of the state fund to allow employers the option to insure their liability for workers' compensation and occupational disease coverage with a nonprofit, independent public corporation. The state fund is a domestic mutual insurer. It is not required to insure any employer in this state requesting coverage, and it may refuse coverage for an employer, e cept a state agency, that the state fund determines to be a bad risk. The state fund must be neither more nor less than self-supporting. Premium rates must be set at a level sufficient to fund the insurance program, including the costs of administration, benefits, and adequate reserves. For the purpose of keeping

the state fund solvent, it must implement safety programs to reward an employer with a good safety record and penalize an employer with a poor safety record.

NEW SECTION. **Section 2.** **Definitions.** Unless the context requires otherwise, in [sections 1, 2, and 4 through 12] the following definitions apply:

(1) "Board" means the board of directors of the state compensation mutual insurance fund provided for in [section 3].

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Executive director" means the chief executive officer of the state compensation mutual insurance fund.

(4) "State fund" means the state compensation mutual insurance fund provided for in [section 4]. It is also known as compensation plan No. 3 or plan No. 3.

NEW SECTION. **Section 3.** **Board of directors of the state compensation mutual insurance fund.** (1) There is a board of directors of the state compensation mutual insurance fund.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may employ its own staff.

(3) The board may provide for its own office space and the office space of the state fund.

(4) The board consists of five members appointed by the governor. The executive director of the state fund is an ex officio nonvoting member.

(5) At least three of the five members shall represent state fund policyholders and may be employees of state fund policyholders. At least three members of the board shall represent private, for-profit enterprises. A member of the board may not:

(a) represent or be an employee of an insurance company that is licensed to transact workers' compensation insurance under compensation plan No. 2; or

(b) be an employee of a self-insured employer under compensation plan No. 1.

(6) A member is appointed for a term of 4 years. The terms of board members must be staggered. A member of the board may serve no more than two 4-year terms. A member shall hold office until a successor is appointed and qualified.

(7) The board is designated as a quasi-judicial board for the purposes of 2-15-124, except that the requirement that at least one member be an attorney does not apply.

NEW SECTION. **Section 4. State compensation mutual insurance fund created.** There is a state compensation mutual insurance fund known as the state fund that is a nonprofit, independent public corporation established for the purpose

of allowing an option for employers to insure their liability for workers' compensation and occupational disease coverage under this chapter. The state fund exists as a domestic mutual insurer as defined in 33-3-102.

NEW SECTION. **Section 5. Management of state fund -- powers and duties of the board.** (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of [sections 1, 2, and 4 through 12], as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of [sections 1, 2, and 4 through 12].

NEW SECTION. **Section 6. Personal liability excluded.** The members of the board, the executive director, and employees of the state fund are not liable personally, either jointly or severally, for any debt or obligation created or incurred by the state fund.

NEW SECTION. **Section 7. Appointment of executive director -- management staff.** The board shall appoint an executive director of the state fund who has general

responsibility for the operations of the state fund. The executive director must have executive level experience, with knowledge of the insurance industry. The executive director must receive compensation as set by the board and serve at the pleasure of the board. The executive director may hire the management staff of the state fund, each of whom serves at the pleasure of the executive director.

NEW SECTION. **Section 8. Powers of the state fund -- rulemaking.** For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, in connection with the coverage, provide employers' liability insurance. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.

(2) sue and be sued;

(3) adopt, amend, and repeal rules relating to the conduct of its business;

(4) enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(5) collect and disburse money received;

(6) adopt classifications and charge premiums for the classifications so that the state fund will be neither more

nor less than self-supporting. The state fund must belong to the national council on compensation insurance and shall use the classifications of employment adopted by the national council.

(7) pay the amounts determined due under a policy of insurance issued by the state fund;

(8) hire personnel;

(9) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until the unfunded liability of the state fund is eliminated.

(10) perform all functions and exercise all powers of a domestic mutual insurer that are necessary, appropriate, or convenient for the administration of the state fund.

NEW SECTION. **Section 9. Property of the state fund -- investment required.** All premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. The money collected by the state fund may not be used for any other purpose. However, state fund money must be invested by the board of investments provided for in 2-15-1808.

NEW SECTION. **Section 10.** State fund a mutual

insurance carrier. (1) The state fund is a domestic mutual insurer controlled by the laws relating to the regulation of domestic mutual insurers in this state. However, the formation, incorporation, bylaws, and bonding requirements set forth in Title 33, chapter 3, do not apply to the state fund.

(2) The commissioner of insurance may not terminate the operations of the state fund based on insolvency due to the unfunded liability that is recognized to exist on the date of passage of [sections 1, 2, and 4 through 12] and recognized in [section 12].

(3) The state fund is subject to the premium tax liability for insurers as provided in 33-2-705.

NEW SECTION. **Section 11.** **Assets and liabilities of prior state fund.** All assets and funds held by the state compensation insurance fund established in 39-71-2301 through 39-71-2308 and 39-71-2321 through 39-71-2327 must be transferred to the state fund, and the state fund shall assume liability for all outstanding claims and indebtedness of the previously existing state fund.

NEW SECTION. **Section 12.** **Unfunded liability.** (1) It is recognized at the date of creation of the state fund that there exists an unfunded liability that is being assumed by the newly created state fund for the prior state compensation insurance fund's liability for industrial

injuries and occupational diseases that occurred prior to July 1, 1987. To assist the state fund in alleviating the unfunded liability, the premium taxes collected by the state from the following sources must be transferred to the newly created state fund:

(a) the state fund;

(b) excess or reinsurance policies on self-insurers writing coverage on a self-insurer's workers' compensation program under compensation plan No. 1; and

(c) private insurance carriers writing workers' compensation insurance under compensation plan No. 2.

(2) The premium taxes must be transferred to the state fund for payment of the unfunded liability. The premium tax payments must continue until the unfunded liability has been paid, at which time the premium taxes must be paid to the general fund.

NEW SECTION. **Section 13.** **Assigned risk plan.** (1) The commissioner of insurance shall promulgate and administer a plan to equitably apportion among the state fund, plan No. 3, and private insurers, plan No. 2, the coverage required by this chapter for employers who are unable to procure coverage through ordinary methods.

(2) All plan No. 2 insurers and the state fund shall subscribe to and participate in the assigned risk plan.

(3) If an insurer refuses to accept its equitable

apportionment under the assigned risk plan, the commissioner of insurance may suspend or revoke the insurer's authority to issue workers' compensation coverage contracts in this state.

Section 14. Section 39-71-116, MCA, is amended to read:

"39-71-116. **Definitions.** Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the division of ~~workers'-compensation~~ prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists).

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(4) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(5) "Days" means calendar days, unless otherwise specified.

(6) "Department" means the department of labor and industry.

(7) "Division" means the division of workers' compensation <u>insurance compliance</u> of the department of labor and industry provided for in 2-15-1702.

(8) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(9) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state ~~compensation insurance~~ fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(10) "Invalid" means one who is physically or mentally incapacitated.

(11) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

(12) "Order" means any decision, rule, direction, requirement, or standard of the division or any other determination arrived at or decision made by the division.

(13) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year; provided, that an estimate may be made by the division for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the division, as the case may actually be, on December 31 of such current year.

(14) "Permanent partial disability" means a condition,

after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss, or both.

(15) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker is unable to return to work in the worker's job pool after exhausting all options set forth in 39-71-1012.

(16) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

(17) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(18) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(19) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the

life or safety of the employee as the nature of the employment will reasonably permit.

(20) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(21) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

(22) "Year", unless otherwise specified, means calendar year."

Section 15. Section 39-71-201, MCA, is amended to read:

"**39-71-201. Administration fund.** (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the division must administer are to be paid upon lawful appropriation. The following ~~moneys~~ money collected by the division ~~shall~~ must be deposited in the state treasury to the credit of the workers' compensation administrative fund and ~~shall~~ must be used for the administrative expenses of the division:

(a) all fees and penalties provided in 39-71-205 and

39-71-304;

(b) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state ~~insurance~~ fund. The assessments ~~shall~~ must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, no assessment of the plan No. 1 employer or plan No. 2 insurer ~~shall~~ may be less than $200. The assessments ~~shall~~ must be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 ~~shall~~ must be assessed an amount sufficient to fund its direct costs and an equitable portion of the indirect costs as referred to above. Other sources of revenue, including unexpended funds from the preceding fiscal year, ~~shall~~ must be used to reduce the costs before levying the assessments.

(2) The administration fund ~~shall~~ must be debited with

expenses incurred by the division in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the division either within or without the state.

(3) Disbursements from the administration money shall must be made after being approved by the division upon claim therefor."

Section 16. Section 39-71-203, MCA, is amended to read:

"39-71-203. Powers of division -- rules ---staffing. (1) The division is hereby vested with full power, authority, and jurisdiction to do and perform any and all things~~,--whether--herein--specifically--designated---or---in addition--thereto,~~ that are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

(2) The division may adopt rules to carry out the provisions of this chapter.

~~(3)--The-division-shall-employ-sufficient-personnel--to allow--it--to -meet-the-claims-processing-goals-contained-in 39-71-604.--The-division-shall--implement--staffing patterns that-are-supported-by-indicators-of-workload.--The-open-file~~

~~is the -workload--indicator--for-claims-processing,-and-the number of-open-claims-per-claims-examiner may--not--be--less than--300.--The--claims--support--staff,-including-the-file, medical-pay,-and-new-claims-units,-may-not-exceed--two--FTEs per--claims--examiner.--The--administrative-and-underwriting staffing-must-be-based--on--the--number--of--premium--paying policyholders---and--may--not--exceed--1.4--FTEs--per--1,000 policyholders.~~

~~(4)--The-division-administrator-shall-submit-a--revised operation--plan-to-the-budget-office-for-review-and-approval and-to-the-legislative-finance-committee-for-review-whenever increases-or-decreases-of-staff-are-necessary--to--implement the-provisions-of-subsection-(3).~~

~~(5)--Funds-from-the-state-special-revenue-fund-shall-be used-to-implement-subsection-(3).~~"

Section 17. Section 39-71-206, MCA, is amended to read:

"39-71-206. Legal advisers adviser of division and state fund. ~~(1)~~ The attorney general ~~shall-be~~ is the legal adviser of the division and the state fund and shall represent ~~it~~ either entity in all proceedings whenever so if requested by the division or state fund any member thereof.

~~(2)--The-division-may,-in-the-investigation-and-defense of-cases-under-plan-No.-3-of-the-Workers'-Compensation--Act, employ--such--other--attorney--or -legal adviser-as-it-deems~~

necessary and pay for the same out of the industrial insurance account in the expendable trust fund."

Section 18. Section 39-71-306, MCA, is amended to read:

"39-71-306. Plan one employers and plan two insurers Insurers to file duplicate receipts paid for injuries and statements of medical expenditures. Every employer coming under the provisions of compensation plan No. 1 and every insurer coming under the provisions of compensation plan No. 2 insurer shall, on or before the 15th day of each and every month, file with the division:

(1) duplicate receipts for all payments made during the previous month to injured workers or their beneficiaries or dependents; and

(2) statements showing the amounts expended during the previous month for medical, surgical, and hospital services for injured workers and for the burial of deceased workers."

Section 19. Section 39-71-307, MCA, is amended to read:

"39-71-307. Employers and insurers to file reports of accidents. (1) Every employer of labor and every insurer is hereby required to file with the division, under such division rules as the division may from time to time make, a full and complete report of every accident to an employee arising out of or in the course of his employment and

resulting in loss of life or injury to such person the employee. Such The reports shall must be furnished to the division in such the form and such detail as the division shall from time to time prescribe prescribes and shall make must provide specific answers to all questions required by the division under its rules. , except, in case he However, if an employee is unable to answer any such questions, a good and sufficient reason shall be given for such failure a question, he shall state the reason he is unable to answer.

(2) Every insurance company insurer transacting business under this chapter shall, at the time and in the manner prescribed by the division, make and file with the division such the reports of accidents as the division may require requires."

Section 20. Section 39-71-308, MCA, is amended to read:

"39-71-308. Neglect or refusal of public corporation to file payroll reports -- arbitrary assessment by division. Whenever any If a public corporation insured by the state compensation insurance fund neglects or refuses to file prescribed payroll reports of its employees, the division may levy an arbitrary assessment upon such the public corporation in an amount of $75 for each such assessment. , which assessments shall The assessment must be collected in the manner provided in this chapter for the collection of

assessments."

Section 21. Section 39-71-403, MCA, is amended to read:

"39-71-403. Plan three exclusive for state agencies -- election of plan by other public corporations. (1) ~~Where~~ If a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, ~~shall be~~ are exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by any state agency ~~shall be~~ are considered to be ordinary and necessary expense of the agency, and the agency shall make appropriation of and pay ~~such~~ the sums into the state ~~compensation insurance~~ fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, employer; plan No. 2, insurer; or plan No. 3, state ~~insurance~~ fund; separately or jointly with any other public corporation, other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance. A public corporation electing compensation plan No. 1 is subject to

the same provisions as a private employer electing compensation plan No. 1.

(3) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and chapter 72 and to discharge all liabilities that reasonably incur during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and chapter 72 and for actual and necessary expenses required for the efficient administration of the fund.

(4) All money in the fund established under subsection (3) not needed to meet immediate expenditures must be invested by the governing body of the public corporation, and all proceeds of the investment shall be credited to the fund."

Section 22. Section 39-71-421, MCA, is amended to read:

"39-71-421. Financial incentives to institute safety programs. ~~The state compensation insurance fund, plan No. 3, and private~~ Private insurers, plan No. 2, may provide financial incentives to an employer who implements a formal safety program. ~~The insurance carrier~~ An insurer may provide to an employer a premium discount that reflects the degree of risk diminished by the implemented safety

program."

Section 23. Section 39-71-604, MCA, is amended to read:

"39-71-604. Application for compensation. (1) Where If a worker is entitled to benefits under this chapter, the worker shall file with the insurer or the division all reasonable information needed by the insurer to determine compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the division without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.

(2) Where If death results from an injury, the parties entitled to compensation or someone in their behalf shall file a claim with the insurer or the division. The claim must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the division.

~~(3)--The-goal-of-the-division-is-to-process-all--claims for--compensation-within-14-days-after-initial-acceptance-of liability-for-a-claim.~~"

Section 24. Section 39-71-704, MCA, is amended to

read:

"39-71-704. Payment of medical, hospital, and related services -- fee schedules and hospital rates. (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following ~~shall~~ must be furnished:

(a) After the happening of the injury, the insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the division for the injuries sustained.

(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(2) A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, ~~shall~~ must be established annually by the workers' compensation division and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship

within each grouping of specialties. Medical fees must be based on the median fees as billed to the state compensation insurance fund during the year preceding the adoption of the schedule. The division shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining the median of billed medical fees. These rules ~~shall~~ must be modeled on the 1974 revision of the 1969 California Relative Value Studies.

(3) Beginning January 1, 1988, the division shall establish rates for hospital services necessary for the treatment of injured workers. Approved rates must be in effect for a period of 12 months from the date of approval. The division may coordinate this ratesetting function with other public agencies that have similar responsibilities.

(4) Notwithstanding subsection (2), beginning January 1, 1988, and ending January 1, 1990, the maximum fees payable by insurers must be limited to the relative value fee schedule established in January 1987. Notwithstanding subsection (3), the hospital rates payable by insurers must be limited to those set in January 1988, until December 31, 1989."

Section 25. Section 39-71-901, MCA, is amended to read:

"39-71-901. Definitions. As used in this part, the

following definitions apply:

(1) "Vocationally handicapped" means a person who has a medically certifiable permanent impairment which is a substantial obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.

(2) "Certificate" means documentation issued by the division ~~of workers' compensation~~ to an individual who is vocationally handicapped.

(3) "Fund" means the subsequent injury fund."

Section 26. Section 39-71-908, MCA, is amended to read:

"39-71-908. Notification of fund of its potential liability under part -- review by fund. Not less than 90 or more than 150 days before the expiration of 104 weeks after the date of injury, the ~~employer, carrier, or the industrial insurance fund, as the case may be,~~ insurer shall notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after the date of the injury. The fund thereafter may review, at reasonable times, such information as the ~~employer, carrier, or industrial insurance fund~~ insurer has regarding the accident and the nature and extent of the injury and disability."

Section 27. Section 39-71-910, MCA, is amended to

read:

"39-71-910. Procedure for resolving disputes as to liability under part. (1) If an employee was employed or retained in employment under the provisions of this part and a dispute or controversy arises as to payment of benefits or the liability therefor, the division shall hold a hearing and resolve all disputes. On motion made in writing by the ~~employer,-carrier,-or-industrial-insurance-fund~~ insurer, the administrator shall join the fund as a party defendant.

(2) The division, within 5 days of the entry of an order joining the fund as a party defendant, shall give the fund written notice thereof not less than 20 days before the date of hearing and shall include the ~~name~~ names of the employee and the ~~employer~~ insurer and the date of the alleged injury or disability. The fund named as a defendant ~~shall-have~~ has 10 days after the date of notification to file objections to being named as a party defendant. On the date of the hearing at which the liability of the parties is determined, the hearing examiner first shall hear arguments and take evidence concerning the joinder as party defendant. If the fund has filed timely objection and if argument and evidence warrant, the hearing examiner shall grant a motion to dismiss.

(3) At the time of the hearing, the ~~employer~~ insurer and fund may appear, cross-examine witnesses, give evidence,

and defend both on the issue of liability of the ~~employer~~ insurer to the employee and on the issue of the liability of the fund.

(4) The hearing examiner shall make findings of fact and conclusions of law determining the respective liability of the ~~employer~~ insurer and the fund."

Section 28. Section 39-71-911, MCA, is amended to read:

"39-71-911. Obligation to make payments on behalf of fund not an independent liability. The obligation imposed by this part on the ~~employer,-carrier,-or-industrial-insurance-fund~~ insurer to make payments on behalf of the fund does not impose an independent liability on the ~~employer,-carrier,-or-industrial-insurance-fund~~ insurer."

Section 29. Section 39-71-913, MCA, is amended to read:

"39-71-913. Payments by fund directly to persons entitled. If the ~~employer,--carrier,--or--the--industrial-insurance--fund~~ insurer does not make the payments on behalf of the fund, the fund may make the payments directly to the persons entitled to the payments."

Section 30. Section 39-71-2303, MCA, is amended to read:

"39-71-2303. Manner of electing -- contract or policy of insurance -- payment of premium. The ~~division~~ state fund

shall prescribe the procedure by which ~~employers~~ an employer may elect to be bound by compensation plan No. 3, the effective time of ~~such~~ the election, and the manner in which ~~such~~ the election is terminated for reasons other than default in payment of premiums. Every employer electing to be bound by compensation plan No. 3 ~~shall~~ must receive from the ~~division~~ state fund a contract or policy of insurance in a form approved by the division. The premium ~~thereon--shall~~ must be paid by the employer to the ~~division~~ state fund at such times as the ~~division--shall--prescribe~~ state fund prescribes and ~~shall~~ must be paid over by the ~~division~~ state fund to the state treasurer to the credit of the ~~industrial insurance expendable trust~~ state mutual insurance fund."

Section 31. Section 39-71-2307, MCA, is amended to read:

"39-71-2307. Cancellation of coverage under plan for default -- thirty days' notice required. The ~~division--is hereby authorized in its discretion to~~ state fund may cancel an employer's right to operate under plan No. 3 of the Workers' Compensation Act for failure to pay the premiums due. When the ~~division makes an order canceling~~ state fund cancels an employer's right for failure to pay premiums, ~~the division~~ it shall notify the employer of its intent to cancel the employer at least 30 days before the cancellation becomes effective. After the cancellation date, the employer

~~shall--have~~ has the same status as an employer who is not enrolled under the Workers' Compensation Act."

Section 32. Section 39-71-2308, MCA, is amended to read:

"39-71-2308. Collection in case of default. (1) If ~~any~~ an employer under plan No. 3 ~~shall default~~ defaults in any payment to the ~~division~~ state fund, the state fund may collect the sum due ~~may be collected by an action at law~~ in a civil action in the name of the state, ~~and such right of action shall be~~ The right of action is cumulative.

(2) ~~When~~ If an employer's right to operate has been canceled by the ~~division~~ state fund for failure to pay premiums and ~~when the division in its discretion~~ the state fund finds that the property and assets of the employer are not sufficient to pay the premiums, the ~~division~~ state fund may compromise the claim for premiums and accept a payment of an amount less than the total amount due."

Section 33. Section 39-71-2321, MCA, is amended to read:

"39-71-2321. What to be deposited in industrial insurance expendable trust fund. All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money ~~shall~~ must be deposited in the ~~industrial insurance expendable trust~~ state fund."

Section 34. Section 39-71-2322, MCA, is amended to read:

"39-71-2322. Money in ~~industrial-insurance~~ state fund held in trust -- disposition of funds upon repeal of chapter. The ~~moneys~~ money coming into the ~~industrial insurance--expendable-trust~~ state fund ~~shall~~ must be held in trust for the purpose for which ~~such-moneys-were~~ the money was collected.~~,--and--if-this-chapter-shall-be-hereafter~~ If this chapter is repealed, ~~such-moneys-shall-be~~ the money is subject to ~~such~~ the disposition ~~as-may-be~~ provided by the legislature repealing this chapter. In ~~default-of--such~~ the absence of a legislative provision, distribution ~~thereof~~ ~~shall~~ must be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing."

Section 35. Section 39-71-2323, MCA, is amended to read:

"39-71-2323. Surplus in ~~industrial-----insurance expendable--trust~~ state fund -- payment of dividends. If at the end of any fiscal year there exists in the ~~industrial insurance--expendable--trust~~ state fund an excess of assets over liabilities and a reasonable surplus, such liabilities to include necessary reserves, which excess may be divided safely, then the ~~division~~ state fund may declare a dividend in ~~such~~ the manner as the rules of the ~~division-may~~ state fund prescribe to those employers who have paid premiums into the ~~industrial-insurance-expendable-trust~~ state fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or proportion of the balance to which the employer is entitled as dividends, the ~~division~~ state fund shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year."

Section 36. Section 39-71-2325, MCA, is amended to read:

"39-71-2325. ~~Division~~ State fund to keep accounts of segregations. The ~~division~~ state fund shall keep an accurate account of all ~~such~~ the segregations of the ~~industrial insurance--expendable-trust~~ state fund and shall divert from the fund any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security."

Section 37. Section 39-71-2327, MCA, is amended to read:

"39-71-2327. Earnings of ~~industrial----insurance expendable-trust~~ state fund to be credited to fund -- improper use a felony. All earnings made by the ~~industrial insurance-expendable-trust~~ state fund by reason of interest paid for the deposit thereof or otherwise ~~shall~~ must be

credited to and become a part of the fund, and the making of profit, either directly or indirectly, by any person out of the use of the fund ~~shall constitute~~ is a felony. ~~and on conviction thereof shall subject the person making such profit to imprisonment in the state penitentiary for a term not exceeding 2 years or a fine not exceeding $5,000 or both such fine and imprisonment.~~ A person convicted of an offense under this section is punishable by imprisonment in the state prison for a term not to exceed 2 years or a fine of not more than $5,000, or both."

Section 38. Section 39-72-201, MCA, is amended to read:

"39-72-201. Administration of chapter. This chapter ~~shall be~~ is administered by the division ~~of workers' compensation~~."

Section 39. Section 39-72-310, MCA, is amended to read:

"39-72-310. Occupational disease coverage under workers' compensation plans. (1) Every employer enrolled under compensation plan No. 1 ~~(Title 39, chapter 71, part 21)~~, every insurer ~~writing workers' compensation coverage~~ under compensation plan No. 2 ~~(Title 39, chapter 71, part 22)~~, and the state ~~compensation insurance~~ fund under compensation plan No. 3 ~~(Title 39, chapter 71, part 23)~~, all provided for under the Workers' Compensation Act, are

considered to also provide full coverage for claims under this chapter. Any policy of insurance for workers' compensation coverage under the Workers' Compensation Act written by a private insurance carrier or the state ~~compensation insurance~~ fund is considered to provide full occupational disease coverage under the provisions of this chapter.

(2) Except as provided in this chapter, the division shall apply the appropriate provisions of Title 39, chapter 71, parts 21, 22, and 23, to the administration of The Occupational Disease Act of Montana in the same manner as they are applied to the administration of the Workers' Compensation Act.

(3) Under compensation plan No. 3, any premiums and other receipts held by the ~~division~~ state fund for occupational disease insurance coverage ~~shall~~ must be transferred ~~and become part of~~ to the workers' compensation industrial insurance account, and payments for occupational disease claims by the state fund ~~shall~~ must be paid out of the industrial insurance account."

Section 40. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 and 2 do not apply to the following positions in state government:

(1) elected officials;

(2) county assessors and their chief deputy;

(3) officers and employees of the legislative branch;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, appointed by the legislature, or appointed by other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) teachers under the authority of the department of institutions;

(11) investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;

(12) four professional staff positions under the board of oil and gas conservation; and

(13) assistant director for security of the Montana state lottery; and

(14) executive director and employees of the state

compensation mutual insurance fund."

Section 41. Section 33-17-502, MCA, is amended to read:

"33-17-502. Prohibition on holding out as consultant -- receiving fee. (1) Any person not licensed as an insurance consultant in this state who identifies or holds himself out to be an insurance consultant without having been licensed as an insurance consultant under this part or any person who uses any other designation or title which is likely to mislead the public and holds himself out in any manner as having particular insurance qualifications other than those for which he may be otherwise licensed or otherwise qualified is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(2) Any person not licensed as an insurance consultant with respect to the relevant kinds of insurance who receives any fee for examining, appraising, reviewing, or evaluating any insurance policy, annuity or pension contract, plan, or program or who shall make recommendations or give advice with regard to any of the above without first having been licensed by the commissioner as an insurance consultant is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(3) Nothing in this part applies to:

(a) licensed attorneys at law in this state acting in

their professional capacity;

(b) an actuary or a certified public accountant who provides information, recommendations, advice, or services in his professional capacity if neither he nor his employer receives any compensation directly or indirectly on account of any insurance, bond, annuity or pension contract that results in whole or part from that information, recommendation, advice, or services; or

(c) a duly licensed casualty insurance agent who accepts a fee from an insured for placement through the state compensation mutual insurance fund as provided in 33-18-212."

Section 42. Section 33-18-212, MCA, is amended to read:

"33-18-212. Illegal dealing in premiums -- improper charges for insurance. (1) No A person ~~shall~~ may not willfully collect any sum as premium or charge for insurance, which insurance is not then provided or is not in due course to be provided (subject to acceptance of the risk by the insurer) by an insurance policy issued by an insurer as authorized by this code.

(2) No A person ~~shall~~ may not willfully collect as premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance and, as specified in the policy, in accordance with the

applicable classifications and rates as filed with and approved by the commissioner; or in cases where classifications, premiums, or rates are not required by this code to be so filed and approved, such premiums and charges ~~shall~~ may not be in excess of or less than those specified in the policy and as fixed by the insurer. This provision ~~shall~~ may not be deemed to prohibit the charging and collection, by surplus lines agents licensed under chapter 2, part 3, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. It ~~shall~~ may not be ~~deemed~~ considered to prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy. The provision of this subsection does not prohibit the collection from an insured of a placement fee, not to exceed 7 1/2% of the annual premium, for placement through the state compensation mutual insurance fund by a duly licensed casualty insurance agent. This placement fee is not a premium as defined in 33-15-102.

(3) Each violation of this section ~~shall--be~~ is punishable under 33-1-104."

Section 43. Section 2-15-1702, MCA, is amended to read:

"2-15-1702. Division of workers' compensation

insurance compliance -- head. (1) There is a division of workers' compensation insurance compliance within the department. The division head is an administrator appointed by the governor as are directors in accordance with 2-15-111.

(2) The division is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the division may hire its own personnel, and 2-15-121(2)(d) does not apply."

Section 4. Section 2-15-1014, MCA, is amended to read:

"2-15-1014. Office of workers' compensation judge -- allocation -- appointment -- salary. (1) There is the office of workers' compensation judge. The office is allocated to the department of ~~administration~~ labor for administrative purposes only as prescribed in 2-15-121.

(2) The governor shall appoint the workers' compensation judge for a term of 6 years in the same manner provided by Title 3, chapter 1, part 10, for the appointment of supreme or district court judges. A vacancy ~~shall~~ must be filled in the same manner as the original appointment.

(3) To be eligible for workers' compensation judge, a person must:

(a) have the qualifications necessary for district court judges found in Article VII, section 9, of the Montana

constitution;

(b) devote full time to the duties of workers' compensation judge and not engage in the private practice of law.

(4) The workers' compensation judge is entitled to the same salary and other emoluments as that of a district judge but ~~shall~~ must be accorded retirement benefits under the public employees' retirement system."

Section 45. Section 39-71-2501, MCA, is amended to read:

"39-71-2501. (Temporary) Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of examiners created in 2-15-1007.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Employer" has the meaning set forth in 39-71-117.

(4) "Payroll" means the payroll of an employer for each of the calendar quarters ending March 31, June 30, September 30, and December 31, for all employments covered under 39-71-401.

(5) "State fund" means the state compensation insurance fund ~~referred to in 39-71-2301~~.

(6) "Tax" means the workers' compensation payroll tax provided for in 39-71-2503.

(7) "Tax account" means the workers' compensation tax account created by 39-71-2504. (Terminates June 30, 1991--sec. 10, Ch. 664, L. 1987.)"

NEW SECTION. **Section 46.** Repealer. Sections 39-71-2301, 39-71-2302, 39-71-2304 through 39-71-2306, and 39-71-2324, MCA, are repealed.

NEW SECTION. **Section 47.** Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **Section 48.** Codification instruction. (1) [Sections 1, 2, and 4 through 12] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 1, 2, and 4 through 12].

(2) [Section 3] is intended to be codified as an integral part of Title 2, chapter 15, part 10, and the provisions of Title 2, chapter 15, part 10, apply to [section 3].

(3) [Section 13] is intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [section 13].

NEW SECTION. **Section 49.** Reorganization procedure. The provisions of sections 2-15-131 through 2-15-137 govern the creation of the state compensation mutual insurance fund

and the transfer of the various functions contained in [this act] from the state workers' compensation fund to the state compensation mutual insurance fund.

NEW SECTION. **Section 50.** Implementation. (1) The governor shall by executive order implement the provisions of [this act].

(2) The governor may by executive order assign to the state compensation mutual insurance fund, in a manner consistent with [this act], functions allocated to the workers' compensation state fund provided for in Title 39, chapter 71, part 23, by the 51st legislature and not transferred by [this act].

NEW SECTION. **Section 51.** Effective dates. (1) [Sections 3, 7, 50, and this section] are effective on passage and approval.

(2) [Sections 1, 2, 4 through 6, and 8 through 49] are effective upon signing of the executive order under [section 50] or on October 1, 1989, whichever occurs earlier.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Revised Fiscal Note for SB428, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

"An act creating the State Compensation Mutual Insurance Fund to insure employers for Workers Compensation and Occupational Disease liability; providing for a Board of Directors; establishing the powers and duties of the Board and the Chief Executive Officer of the State Compensation Mutual Insurance Fund; transferring the Office of Workers' Compensation Judge to the Department of Labor; amending Sections 2-15-1014, 2-15-1702, 2-18-103, 33-17-502, 33-18-212, 39-71-116, 39-71-201, 39-71-203, 39-71-206, 39-71-306 through 39-71-308, 39-71-403, 39-71-421,39-71-604, 39-71-704, 39-71-901, 39-71-908, 39-71-910, 39-71-911, 39-71-913, 39-71-2303, 39-71-2307, 39-71-2308, 39-71-2321 through 39-71-2323, 39-71-2325, 39-71-2327, 39-71-2501, 39-72-201, and 39-72-310, MCA; repealing Sections 39-71-2301, 39-71-2302, 39-71-2304 through 39-71-2306, and 39-71-2324, MCA; and providing effective dates."

NOTE: Agencies' assumptions and individual fiscal impact statements follow on subsequent pages.

FISCAL IMPACT:

(Agencies Combined)

	FY90			FY91		
GENERAL FUND:	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Revenue:						
Premium Tax - Private Carriers	$2,170,000	$ -0-	($2,170,000)	$2,388,000	$ -0-	($2,388,000)
Net Impact:			($2,170,000)			($2,388,000)
STATE SPECIAL REVENUE:						
Revenue:						
Assessments - Workers Comp	$9,525,912	$9,716,759	$ 190,847	$9,444,727	$9,595,574	$ 150,847
Premium Tax - Private Carrier	$ -0-	$2,170,000	$2,170,000	$ -0-	$2,388,000	$2,388,000
Premium Tax - State Fund	$ -0-	$2,987,000	$2,987,000	$ -0-	$3,435,000	$3,435,000
Expenditures:						
Operating - State Fund	$9,525,912	$9,716,759	$ 190,847	$9,444,727	$9,595,574	$ 150,847
Operating - State Auditor	$ -0-	$ 25,756	$ 25,756	$ -0-	$ 52,926	$ 52,926
Net Impact:						
(Contribution to Unfunded Liability)			$5,131,244			$5,770,074

Ray Shackleford DATE 3/9/89
RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 3/9/89
GENE THAYER, PRIMARY SPONSOR

Revised Fiscal Note for SB428, as introduced

<R 470

DIVISION OF WORKERS' COMPENSATION:
ASSUMPTIONS:

1. Support and safety services for the State Compensation Mutual Insurance Fund (SCMIF) and the Division of Workers' Compensation Insurance Compliance (DWCIC) will continue on the same basis as currently provided.
2. The SCMIF and DWCIC will remain in the same facility, having full use of all equipment presently utilized.
3. The following coordinations will continue to occur between DWCIC and SCMIF:
   a. Claims management - Continued access to all claims files on demand; continued preparation of settlement summaries and of routine orders (i.e., all word processed documents) as is currently provided; continued access to all computer screens now available to Division staff.
   b. Files and records management - Continued access to all claims files on demand, avoiding the necessity to complete duplicates of Plan III files.
   c. Continued processing of all Plan III extraterritorial certificates and corporate officer exemptions, with appropriate notice to DWCIC (could be computer notice).
   d. Continued access to all Plan III coverages and cancellations as is currently available, including cooperation by SCMIF Policy Services Unit in providing all information currently provided to enable expeditious identification and pursuit of uninsured employers.
   e. Continued access to all SCMIF medical and hospital information in formats and time frames determined by DWCIC in order to expedite the annual relative value fee schedule and any revised hospital rate regulation methods necessary to implement Section 39-71-704, MCA.
4. The Assigned Risk Pool will be managed entirely by the State Auditor (Insurance Commissioner) without any extra effort by DWCIC.
5. The State Auditor will provide estimates of revenue generated by the premium tax.
6. Public entities will not form new self-insurance groups.
7. Workload for Accident Cataloging and Uninsured Employers' Units will remain constant.
8. Printing costs will increase because of new information materials and new and revised forms.
9. Additional mailings will be required to provide adequate notice of various changes resulting from creation of the SCMIF.
10. There will not be a significant increase in complaints, disputes, and litigation caused by the separation of SCMIF from the Division.
11. Board will meet five days a month in FY90 and one day a month in FY91. Travel and expenses will amount to $100/day/member.
12. Board will hire a secretary and internal auditor as staff positions, and will contract with an accounting firm to review the financial condition of the fund.
13. Chief Executive Officer will be paid $80,000 annually.
14. All other staff positions presently employed by the State Compensation Insurance Fund will be retained by the State Compensation Mutual Insurance Fund at their present salaries.
15. Budget shown under current law is that approved by the Human Services Appropriations Sub-Committee.

DIVISION OF WORKERS' COMPENSATION:

FISCAL IMPACT:

	FY90			FY91		
Revenue:	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Assessments	$9,525,912	$9,716,759	$ 190,847	$9,444,727	$9,595,574	$ 150,847
Expenditures:	$9,525,912	$9,716,759	$ 190,847	$9,444,727	$9,595,574	$ 150,847
Fund Impact:						
State Special Revenue	$ -0-	$ -0-	$ -0-	$ -0-	$ -0-	$ -0-

DEPARTMENT OF ADMINISTRATION:

ASSUMPTIONS:

1. Assume the Workers' Compensation Court would move from the Department of Administration to the Department of Labor and Industry. The budget approved to date by the General Government Subcommittee will also move.
2. The Department of Administration cannot calculate the fiscal impact of moving the Board of Directors of the State Compensation Mutual Insurance Fund.

FISCAL IMPACTS:

	FY90			FY91		
Expenditures:	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Personal Services	$231,247	$ -0-	($231,247)	$231,722	$ -0-	$ 231,722
Operating Expenses	74,887	-0-	(74,887)	71,214	-0-	(71,214)
FTE level	8.0	0	(8.0)	8.0	0	(8.0)
Fund Impact:						
State Special Revenue	$306,134	$ -0-	($306,134)	$302,936	$ -0-	($ 302,936)

STATE AUDITORS OFFICE:

ASSUMPTIONS:

1. That one grade 12, step 2 employee in the State Auditor's Office will be required to coordinate the assigned risk pool required under Section 13 of the bill. Annual cost: $21,400.
2. That the premium tax rate will remain at 2.75%.
3. That workers' compensation premiums written by private insurers in calendar year 1987 were $57,206,000; that workers' compensation premiums earned by the state fund for FY88 were $85,865,000.
4. That private insurers' premiums will increase in calendar years 1988, 1989, and 1990 at rates of 20%, 15%, and 10% respectively.
5. That the state fund premiums will increase in FY89, FY90, and FY91 at rates of 10%, 15%, and 15%, respectively.
6. That the general fund will reallocate private insurer premium taxes of $2,170,000 and $2,388,000 for FY90 and FY91, respectively, to reduce the state fund deficit.

7. That totally new premium taxes from the state fund will be $2,987,000 and $3,435,000 for FY90 and FY91, respectively, to be used to reduce the state fund deficit. However, these tax monies represent a loss to the general fund.
8. That the state fund currently holds approximately 60% of the market share of workers' compensation insurance; that this bill may cause a significant change in that percentage, but such change is not contemplated in the accompanying calculations.
9. That a triennial examination of the state fund, required by 33-1-401 under this bill and estimated to cost $30,000, would be conducted in FY91 (contracted services; operating expenses).
10. That the State Auditor's Office will not need to expend contracted services to develop the "Assigned-Risk Plan" mentioned in Section 13 of this bill.

FISCAL IMPACT:

	FY90			FY91		
Revenue:	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Premium Tax						
State Fund	$ -0-	$2,987,000	$2,987,000	$ -0-	$3,435,000	$3,435,000
General Fund*						
Private Insurers	$2,170,000	$ -0-	($2,170,000)	$2,388,000	$ -0-	($2,388,000)
State Special Fund						
Private Insurers	$ -0-	$2,170,000	$2,170,000	$ -0-	$2,388,000	$2,388,000
Expenditures:	$ -0-	$ 25,756	$ 25,756	$ -0-	$ 52,926	$ 52,926
Fund Impact:						
General Fund	$2,170,000	$ -0-	($2,170,000)	$2,388,000	$ -0-	($2,388,000)
State Special Revenue	$ -0-	$5,157,000	$5,157,000	$ -0-	$5,823,000	$5,823,000

*The Premium Tax collected from private insurers writing workers compensation insurance under plan no. 2 will be transferred from the general fund to the newly created state fund.

Senate Bills — 51st LEGISLATIVE SESSION

COMMITTEE ON Business & Industry

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB 428	2/15	2/17	2/17			2/17			
SB 429	2/15	2/15	2/15	2/15					
SB 430		2/16	2/16	2/16					
SB 438	2/15	2/16	2/16	2/16					
SB 443	2/16	2/17	2/17	2/17					
SB 449	2/16	2/17	2/17	2/17					
SB 453	2/16	3/3 3/6 3/7	3/6 3/8		3/6 SOR Stay 3 sens. 3/8 Bat. out				
SB 453 Rereferred	3/9	3/16 3/17							

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By Chairman Gene Thayer, on February 17, 1989, at 10:00 a.m. through 12:30 p.m., with an Executive Action Session at 1:30 p.m.

ROLL CALL

Members Present: Chairman Thayer, Vice Chairman Meyer, Senator Boylan, Senator Noble, Senator Williams, Senator Hager, Senator McLane, Senator Weeding, Senator Lynch

Members Excused: None

Members Absent: None

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: Chairman Thayer said we'll be 30 minutes on the first 2 bills, and the room is small, so those who are here for the last bills could leave and return in 1/2 hour if they wished.

HEARING ON SENATE BILL 443

Presentation and Opening Statement by Sponsor: Senator Stimatz, Senate District 35, stated that the original lottery legislation said regional. According to the Attorney General's opinion, we were not eligible to do multi-state lotteries. Senate Bill 443 will change that to multi-state, so that we can do across the U.S. On page 2, lines 4 and 5 is the only new language in the bill, and it deletes the word "regional". That gives us the authority to study and enter into agreements with other lottery states to offer lottery games. The technology has improved greatly, through the use of computers, that you don't have to just have a relationship with an adjacent state. This authority allows the lottery to study and pick the best group of states in which to promote lottery tickets.

List of Testifying Proponents and What Group They Represent:

Diana Dowling, Director of the Montana Lottery

DISPOSITION OF SENATE BILL 449

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Weeding made a motion SB 449 DO PASS. It was seconded by Senator McLane. The motion Carried, with Senator Hager opposed.

Announcement: Chairman Thayer asked Vice Chairman Meyer to preside while he presented SB 428.

HEARING ON SENATE BILL 428

Presentation and Opening Statement by Sponsor: Senator Thayer, Senate District 19, stated SB 428 would set up the state Workers' Compensation Insurance Plan, as a domestic mutual insurer. He said "The governor's advisory council of 1985-87, which established the foundation of the 1987 reforms, submitted a proposal to remove the state fund from the administrative control of the division of workers' compensation. At that time the council members had not come to a consensus on the separation issue, and the department did not support the idea because they felt the problems were more perceived than real. However, it now becomes more apparent, that as the deficit continues to grow, bold steps must be taken to establish an entity which will guarantee continuous, well managed coverage through a mechanism that is established along the lines of a private insurance company. Montana is probably the only state where both the workers' compensation and regulatory function of the state fund are responsible to the same authority. Most states separate this authority to avoid the appearance of conflict of interest. This is a step toward a new fiscal policy, and better service and management for all parties involved. The current administration is asking your favorable consideration of this bill."

Senator Thayer said that last night a group of interested parties spent several hours making technical amendments, which he offered for consideration. (Exhibit 12) He stated the people from the industry had drafted the meat of the bill, and he felt it was basically a good bill.

List of Testifying Proponents and What Group They Represent:

Mike Micone - Commissioner, Department of Labor and Industry
Bill Palmer - Interim Director, Workers' Compensation Division
Jack Salmond - Western Environmental Trade Association
Tom Harrison - Montana Workers' Compensation Council, ad hoc committee
Bob Bailey - Manager, EBI Orin in Montana
James Tutwiler - Montana Chamber of Commerce
Don Allen - Executive Director, Montana Wood Products Association
George Wood - Executive Vice President, Montana Self Insurers Association
Jacqueline Terrell - American Insurance Association
Lorie Shadoan - Bozeman Chamber of Commerce
Charles Brooks - Executive Vice President, Montana Retailers Association
Bonnie Tippy - Alliance of American Insurers Montana Manufactured Housing, and R. V. Dealers Montana Innkeepers Association
Cathy Anderson - Independent Insurance Agents Association of Montana
Don Judge - AFL-CIO
Peter Funk - Assistant Attorney General
Norm Grosfield - Attorney, Workers' Compensation Division
Rob Morway - Missoula Chamber of Commerce

List of Testifying Opponents and What Group They Represent:

None

Testimony: Mike Micone said they supported SB 428, which separated the Workers' Compensation State Fund from the Workers' Compensation Division. He read his testimony into the record. (Exhibit 13)

Bill Palmer read his testimony into the record, and stated they strongly supported SB 428. (Exhibit 14)

Jack Salmond said, " WETA is the only organization in the state that joins labor, industry, agriculture, recreation, and business, together to promote economic development and job opportunities. In the past we have worked closely with the legislature to improve the workers' compensation system. There is no question that the injured worker is entitled to timely compensation when the circumstances determine him to be deserving. We further believe that employers deserve to be assessed reasonable rates if we expect them to

continue to provide jobs and economic growth. That is why we support SB 428."

Mr. Salmond said. "We believe that creation of a separate state insurance fund run by a board of directors will significantly improve the states ability to meet both the above goals. The most significant benefits of this legislation are as follows:"

"1. Rather than be mired in bureaucracy and red tape the new state fund will have the incentive to seek the most efficient, cost effective means to run a successful insurance business. For employers, the costs will translate into reduced rates in the long run. For workers it will mean more timely claims review and processing."

"2. We have long argued for the need to reward employers, who demonstrate effective safety programs. Passage of this will mean reduced rates for those employers who do demonstrate effective safety programs. Passage of this bill will mean reduced rates for those employers who demonstrate they are a good risk while penalizing those who don't perform at an acceptable level."

"3. By establishing an efficient, self-supporting insurance fund, we will allow our existing business community to become more competitive in the market place and further we will allow Montana to attract new business."

Tom Harrison said, "One of the strong points of this bill, is that it will eliminate the conflict of interest and the appearance of a conflict of interest within the fund and the administration of all funds or insurance companies...I can represent, to you, a broad range of the people that are hands on within expertise in the workers' compensation field." He said any of his members would answer questions as to the practical accomplishments of this bill, and stated they were strongly in favor of SB 428.

He said, "One concern we ask the committee to review is the concern of the change that this bill contemplates, by going from the State of Montana being the effective assigned risk pool, which is the position they've had, to a completely independent insurance status and just a participant in a separate assigned risk pool. Our feeling is that it might be better to retain the state as the effective assigned risk pool. If you wanted to get insurance from the state, the

state could not deny the coverage. If you don't retain that,...then you've just put another insurance company, and this one a state company, into competition with other independent insurance companies..."

He said, "The fund was solvent for many years and became heir to the unfunded liability when the decision was made to not implement the advise of actuarial people that said that the rates had to be raised."

Bob Bailey said he represented the largest private compensation carrier doing business in Montana. He believed SB 428 was a good bill with the exception of the assigned risk plan in section 13. He stated he was requesting an amendment to the bill deleting this section in it's entirety.

He said he wanted to explain the problems of an assigned risk plan as set forth in this bill. The purpose of the bill is to facilitate a plan to retire the current state fund's deficit. There are dedicated taxes to facilitate this plan. The bill will also assure that the new fund will operate without incurring future deficits. It will operate to be neither more nor less than self-supporting. Another purpose of the bill will be to create a business environment to encourage private carriers to do business in the state. Creating an efficient workers' compensation system at a minimum cost to Montana employers. This is a competitive system that does not artificially support interest of one industry over the interests of another industry.

We would like to see this plan on track to retire the deficit. We would like to see many private carriers competing in the state. We would like to see this new state fund operating in competition with private carriers, probably with a lower market share than presently. They would also like to see the new state fund provide a guaranteed market for those employers who cannot secure coverage through the private sector. This is a much preferred alternative than creating an additional mechanism of an assigned risk pool. In the first place, it is the state that requires all employers to provide workers' compensation coverage for their employees. Because the state can't require private carriers to do business in Montana, and provide this coverage, the state is obligated to set-up some mechanism to assure the availability of workers' compensation coverage. This is accomplished by the state fund.

In section 1 of the bill it says in the interest of keeping the fund solvent, it must implement various pricing levels within the rate classifications to reward employers for good safety records and penalize employers with poor safety records. This means the new state fund will have the flexibility to establish several rate levels within each occupational classification. A good risk will be offered the lowest rate. The highest rate will be reserved for the poorest risk who can't obtain coverage elsewhere.

He said he believed that if you install an assigned risk pool, insurance carriers that are looking to come into Montana will not come. It would force existing carriers in the state to reevaluate their presence here. An assigned risk pool restricts free enterprise for private carriers to make their own business decisions. He passed out exhibit #16 which showed the losses in 1987 for private insurance companies who operate in Montana. He said Section 13 had no provision to restrict the size of the assigned risk pool, and that is why he was asking to delete section 13 entirely.

James Tutwiler said the Chamber of Commerce was one of the leading advocates of business in the state. He said what he saw happening with workers' compensation was encouraging. He surveyed over 1,000 businesses regarding workers' compensation, and their response was a concern about how workers' compensation operated today. He said that how we conduct our workers' compensation was a major factor in any risk assessment that a corporation would do if they contemplated doing business in the state.

He said SB 428 was a good bill, and was a positive step which offered hope of improving management, and deserved the support of all business. He said he was concerned about doing away with the state fund as an insurer of last resort, and cutting out the assigned risk pool. He said the Montana Chamber endorsed this particular legislation.

Don Allen said there were three words that really addressed the reason why this bill should pass. They were incompetence, competence and creditability.

The forest products industry represented a large segment of the state's economy. It employed over 10,000 people, with an annual payroll of $260,000,000 directly. Indirectly, add another 20,000 people with

another $400,000,000, plus payroll. They thought this bill would go a long way in accomplishing goals that all business needed to look at, to have confidence in the future of doing business in Montana. He said they strongly endorsed SB 428.

George Wood stated he was one of the people who spent more than a year researching this problem, and his association strongly supported this legislation. The one point in the bill that needed to be amended was the assigned risk pool and the insurer of last resort. Their objection to the assigned risk pool was, the philosophy of the Montana Self Insurers, that state operated businesses not be in opposition to private enterprise. He said this bill was well written, long needed, and they would support it strongly.

Jacqueline Terrell said this legislation had been well drafted and they supported the bill, with the request that the assigned risk plan be deleted from the bill.

Lorie Shadoan said the Bozeman Chamber of Commerce supported SB 428, and asked that the section on the assigned risk plan be taken out of this bill.

Charles Brooks said he represented about 1,000 retailers throughout the state, who supported SB 428, and joined the other groups in their objection to the assigned risk pool clause. He urged support of SB 428, with that out of the bill.

Bonnie Tippy stated that she represented the strong support of three groups of employers and employees. She said they were also objecting to the assigned risk pool section of the bill.

Cathy Anderson said their group also served on the advisory committee for the Montana Workers' Compensation Council, and they supported the bill with the assigned risk pool eliminated.

Don Judge, AFL-CIO, read testimony into the record in support of SB 428. (Exhibit 17) He suggested an amendment to adopt a tripartite system with mandated representation by the business community, labor, and the public. That way, none of the parties with legitimate direct interest in the issue would be left out. All in all, they believed SB 428 was a good bill that aimed to put the state workers' compensation system back on sound footing, which they supported.

Peter Funk said the Attorney General's Office urged the committee to adopt the proposed amendment that dealt with section 17. He said that was the section that addressed the issue of legal representation of both the Workers' Compensation Division and the Fund. As the bill was drafted on page 19, subsection 2 of the existing statute was stricken there. He stated it was important to realize that much of the workers' compensation defense work was contracted out. The Fund did a portion of it, the Attorney General's Office did a portion of it, and private firms around the state did a portion. By striking subsection 2, you have limited the ability for the Attorney General's Office or the Fund to contract with private attorneys. He urged the proposed amendment for section 17 be adopted, to keep the present flexibility built into the bill.

Norm Grosfield said he was involved in the group that drafted the bill, and he supported the statement of Mr. Harrison, who was the spokesman for that group. He concurred in the concern regarding the assigned risk pool. One other concern he had was the provision in Section 40, which provided for unlimited discretion for the Fund to hire all employees of the State Fund, and that existing employees wouldn't have any protection. He thought consideration should be given to current employees of the State Fund, as many of them were career employees and had years of service with the state, and they should be protected. It was the intent of their group, that those employees would simply transfer over to the new state fund department. If the legislature wanted to provide flexibility for the top management level, that was fine, but the current state fund employees should be grandfathered in. He said they should have protection and their current union contract should apply. He said they generally supported SB 428.

Rob Morway stated they supported the concept of this legislation and supported SB 428, with the assigned risk pool deleted.

Questions From Committee Members: Senator Lynch asked Don Judge to explain the tripartite system. Mr. Judge explained that the makeup of the governing board was representation from people who were subjects themselves, or from labor, or the business community.

Senator Boylan asked who was going to have the power in regulating safety with the assigned risk pool? Mike Micone answered that after the fund was separated, the balance of the division would be a lined agency of the

Department of Labor and Industry. Compliance would ultimately rest with the Department of Labor and Industry.

Senator Boylan said he thought the present problem with workers' compensation was that it couldn't enforce safety. Bill Palmer stated that currently a great deal of safety enforcement was done by OSHA, and in those cases, the state was pre-empted. In cases where an organization was a school district, town, city, or county, the Division had the authority. That authority would remain with the Department of Labor for enforcement. There was also a certain number of state people that would go with the State Fund, and that would assist employers in developing safety programs. The enforcement of public safety and public corporations would stay with the Department of Labor. OSHA would still have their requirements, and the State Fund would have laws control officers.

Senator Williams asked Mr. Palmer if the Fund could refuse coverage? Bill Palmer answered that, yes, that the state would be able to refuse coverage for whatever reason. It would operate very similar to a private carrier.

Senator Weeding asked if there was a plan for the assigned risk out of the pool? Mr. Grosfield answered that the committee fully discussed the assigned risk plan, and one of the primary reasons for creating the State Fund was for the purpose of assigned risk, so there was easy access to insurance to people that private industry won't insure. By taking on those bad risks, the state fund was in a position to take on the good risks.

First, the operating costs of state funds were substantially below private carriers. Secondly, there was no need for profit in the state fund. Third, they were easily accessible, and they were out front, so the insurance could be easily obtained. Fourth, under this proposal the state fund would be getting some support for its unfunded liability through the tax assessment and the 3% which was already in existence. The State Fund was in a unique position and could operate on a competitive basis.

He said that before 1983, there was truly a fair competition between the State Fund and about 200 private carriers writing workers' compensation insurance. The state fund wrote about 1/2 the business and private carriers wrote about 1/2 the business. The system worked well and, it worked as a check and

balance on each other, and we would like to reinstate that. We would encourage private carriers to come back and sell insurance, and by putting the assigned risk pool in, they would be concerned that private carriers would not come operate in Montana.

Senator Williams asked, if the state assumed liability for outstanding claims and indebtedness, of the previously existing State Fund, and the Supreme Court ruled that we had dealt wrongly with previous claims, how would their decision affect this?

Mr. Grosfield said they figured it was going to take fifteen or sixteen million dollars every year, on a cash in and cash out basis, to take care of that. He said that was about the amount the new Fund would need to take care of the unfunded liability. He stated there was a mechanism built in, for the cash in and cash out, to protect the new State Fund and make it a viable operation.

He said the legislation passed in 1987 substantially reduced benefit costs, which in turn should be a substantial savings to the employers of the state. Combined with the differential that is now being used by the state, it would address the unfunded liability.

Senator Williams asked how the sixteen million dollars related to the .3 of 1% payroll tax and proposed .3 of 1% employee tax? Mr. Grosfield answered that the current employer tax generated about $12,000,000 per year. The premium taxes that are collected by the State Fund, and the premium taxes put into this fund by private carriers generated another $4,000,000 to $5,000,000. He said that was how they came up with $16 million.

Senator Williams asked, if we pass this bill and we find a buyer for the whole operation, what would the affect be? He asked, if we get this working well, would we want to see it? Mr. Grosfield said that if the State Fund went along as they hoped it would, it very well could be saleable in the future. He said they might, at some point, consider that option of a sale.

Closing by Sponsor: Senator Thayer thanked everyone for a good hearing on this bill. He stated he wanted to go over some of the points that were made today. SB 315

was a good bill. It didn't produce immediate results, because of the effects of the outdated law. The unfunded liability grew in the last few years to $149,000,000, while they had taken in $22,000,000 in payroll tax. We may be at a point where the unfunded liability was peaking or had peaked and was starting down. This bill was necessary and was discussed at great lengths during advisory council. He said SB 428 was a compliment to SB 315, and we would have to keep reforming the process.

He stressed the important things the bill did, as: 1. It mandated strong safety measures. We're sending a message to all employers in Montana that they had better practice good safety regulations for their employees. We want to reward good employers, that maintain a good safety program and have a good safety record, with reduced rates and penalize those employers who haven't instigated a safe work place.

2. It mandated that the new board would have to set rates on actuary figures. That was going to raise rates in Montana. We have to pay a fair price for a product.

Senator Thayer said that the amendments he proposed were not substantive in nature. He said the amendment proposed by Mr. Funk of the Attorney General's Office was already included in his amendment. The major problem was the assigned risk pool. He said the ad hoc committee had not made that suggestion, but he had put it in himself because it was an important policy situation that needed to be addressed. He said we needed to realize, understand, and be able to analyze from both sides, and accept whatever the legislature decided. Senator Thayer said he felt it should be included in the draft of the bill, because if you set the rates on an actuarial sound basis, the assigned risk pool should disappear. He said his fear was, what business could survive on the basis of being the one who had to survive on writing all the bad risks? It was in there to help the plan work, and not to detract from getting private carriers. He said he was in favor of private enterprise, and saw the possibility that the state would write less business, and private carriers would write more. He said that if everyone shared in the assigned risk pool, it put everybody on the same plane. He said SB 428 was a good bill, and asked for their support.

DISPOSITION OF SENATE BILL 428

Discussion: Chairman Thayer passed out amendments, (Exhibit 22) and reminded the committee there were amendments suggested during testimony. (Exhibit 12)

Mary McCue called attention to the fact that they were repealing section 2-15-1702. That was the section that gave the Governor the authority to name the administrator of the division. She said she would have to delete the related language throughout the bill.

Senator Williams asked if the manager who was to be hired, would be hired by the board which was appointed by the governor, or would it be an exempt position?

Chairman Thayer said the present language made them all exempt. Chairman Thayer said he expected there may be an effort to amend the bill on the Senate floor, and he planned to point out, when he presented the bill, the areas that were questioned during the hearing. Some people didn't want everybody taken out of the pay plan. Transversely, we must ascertain that the language was in the bill to protect those employees, to keep their present benefits. He said the assigned risk pool had to be decided on, and Don Judge had brought up the make-up of the board, and that was open to discussion. Chairman Thayer stated the most prevalent discussion had been over the request to delete the assigned risk pool.

Senator Weeding said he thought they should leave that in the bill.

Chairman Thayer said, that would be a huge policy change if that section was deleted, and it should have a chance to be debated on the floor, and I have assured the industry we will work with them.

Amendments and Votes: Senator Noble made a motion to adopt the amendments to SB 428, (Exhibit 22) and give Mary McCue the authority to make the needed language changes. Senator Meyer second the motion. The motion Carried Unanimously.

Recommendation and Vote: Senator Noble made a motion SB 428 DO PASS AS AMENDED. Senator McLane second the motion. The motion carried, with Senator Boylan opposed.

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 2/17

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DARRYL MEYER	✓		
SENATOR PAUL BOYLAN	✓		
SENATOR JERRY NOBLE	✓		
SENATOR BOB WILLIAMS	✓		
SENATOR TOM HAGER	✓		
SENATOR HARRY MC LANE	✓		
SENATOR CECIL WEEDING	✓		
SENATOR JOHN"J.D."LYNCH	✓		
SENATOR GENE THAYER	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

February 17, 1989

MR. PRESIDENT:
We, your committee on Business and Industry, having had under consideration SB 428 (first reading copy -- white), respectfully report that SB 428 be amended and as so amended do pass:

(See attached)

AND AS AMENDED DO PASS

Signed: Gene Thayer, Chairman

2-17-89

SCRSB428.217

SENATE STANDING COMMITTEE REPORT

February 17, 1989

MR. PRESIDENT:
We, your committee on Business and Industry, having had under consideration SB 428 (first reading copy -- white), respectfully report that SB 428 be amended and as so amended do pass:

1. Title, line 12.
Following: "LABOR"
Insert: "AND INDUSTRY"
Strike: "2-15-1702,"
Following: "2-18-103,"
Insert: "33-2-119,"

2. Title, line 13.
Following: "33-18-212,"
Insert: "37-72-101,"

3. Title, line 18.
Strike: "AND"
Following: "39-72-310,"
Insert: "50-71-102, AND 50-73-102,"

4. Title, line 19.
Following: "SECTIONS"
Insert: "2-15-1702,"

5. Page 2, lines 24 and 25.
Strike: "It" on line 24 through end of line 25

6. Page 3, following line 10.
Insert: "The legislature intends that the governor shall implement staggered terms in naming the initial members of the board."

7. Page 3, lines 20 and 21.
Following: "agency"
Strike: remainder of line 20 through "risk" on line 21

8. Page 4, line 1.
Strike: "safety programs"
Insert: "variable pricing levels within individual rate classifications"

9. Page 5, line 19.
Following: "The"
Strike: "board is designated as"
Insert: "members must be appointed and compensated in the same manner as members of"

continued

10. Page 5, line 20.
Strike: "for the purposes of"
Insert: "as provided in"

11. Page 8, line 4.
Following: "council"
Insert: "and corresponding rates as a basis for setting its own rates"

12. Page 8, line 10.
Following: "eliminated"
Insert: "and adequate actuarially determined reserves are determined"

13. Page 9, line 13.
Following: "33-2-705"
Insert: "based on earned premium and paid on revenue from the previous fiscal year"

14. Page 11, line 3.
Strike: "coverage contracts"
Insert: "insurance policies"

15. Page 12, line 23.
Strike: "provided for in 2-15-1702"

16. Page 18, line 18.
Strike: "adviser"
Insert: "advisers"

17. Page 18, following line 22.
Insert: "The division and state fund may employ other attorneys or legal advisers as they consider necessary."

18. Page 19, line 6.
Strike: "duplicate receipts"
Insert: "summary reports of benefits"

19. Page 19, line 12.
Strike: "duplicate receipts"
Insert: "summary reports of benefits"

20. Page 20, line 7.
Strike: "employee"
Insert: "employer"

continued

21. Page 22, line 21.
Strike: "Private insurers, plan No. 2,"
Insert: "Insurers"

22. Page 24, line 21.
Strike: "workers' compensation"

23. Page 25, lines 2 and 3.
Strike: "compensation insurance"

24. Page 25, line 4.
Following: "schedule."
Insert: "The state fund shall report fees billed in the form and at the times required by the division."

25. Page 29, line 13.
Strike: "mutual insurance"

26. Page 29, lines 16 and 17.
Strike: "under plan for default"

27. Page 29, line 21.
Following: "due"
Insert: "or because of a significant change in liability exposure"

28. Page 29, line 22.
Strike: "right for failure to pay premiums"
Insert: "coverage"

29. Page 30, lines 20 and 21.
Strike: "industrial insurance expendable trust"
Insert: "state"

30. Page 38, line 23 through page 39, line 9.
Strike: section 43 in its entirety
Renumber: subsequent sections

31. Page 39, line 15.
Following: "labor"
Insert: "and industry"

32. Page 40, line 22.
Following: "compensation"
Insert: "mutual"

continued

33. Page 41, following line 3.
Insert: "NEW SECTION. Section 45. State fund to submit notice of coverage within thirty days -- penalty for failure. (1) The state fund shall, within 30 days after the issuance of an insurance policy, submit to the division the notice of coverage stating the effective date of the policy insuring the employer and other information the division requires.

(2) The division may assess a penalty of no more than $200 against the state fund if, as a general business practice, the state fund does not comply with the 30-day notice requirement.

NEW SECTION. Section 46. Policy remains in effect until canceled or replaced -- twenty-day notification of cancellation required. The insurance policy remains in effect until canceled. Cancellation may take effect only by written notice to the named insured and to the division at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding insurance policy issued to the insured. Nothing in this section prevents the state fund from canceling an insurance policy before a replacement policy is issued to the insured.

Section 47. Section 33-2-119, MCA, is amended to read:
"33-2-119. Suspension or revocation for violations and special grounds. (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has:

(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;

(b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in another insurer. In considering suspension or revocation, the commissioner shall consider all relevant factors, including whether:

(i) after the reinsurance transaction all parties will be in compliance with Montana law; and

(ii) the transaction will substantially reduce protection and service to Montana policyholders;

(c) failed to accept an equitable apportionment of assigned coverage as required by [section 13].

(2) The commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) is in unsound condition or in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay proper claims arising under its policies, whether any such claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to such third person, or without just cause compels such insured or claimant to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or such an insured to secure full payment or settlement of such claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus lines insurer under part 3 of this chapter.

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."

Section 48. Section 37-72-101, MCA, is amended to read:

"37-72-101. Construction blasting restrictions -- license required -- definitions -- exemptions. (1) No person may engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the workers' compensation division.

(2) For the purposes of this chapter:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) "division" means the division of workers' compensation insurance compliance ~~division~~ of the department of labor and industry ~~provided for in 2-15-1702~~;

(d) "explosive" has the meaning given in 50-38-101;

(e) "magazine" has the meaning given in 50-38-101.

continued

(3) Nothing in this chapter applies to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection must comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under and implementing 82-4-231(10)(e)."

Section 49. Section 50-71-102, MCA, is amended to read:

"50-71-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

(2) "Code" means a standard body of rules for safety formulated, adopted, and issued by the division under the provisions of this chapter.

(3) "Division" means the division of workers' compensation insurance compliance of the department of labor and industry ~~provided for in 2-15-1702~~.

(4) "Employee" and "worker" are defined as in 39-71-118.

(5) "Employer" is defined as in 39-71-117.

(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change."

Section 50. Section 50-73-102, MCA, is amended to read:

"50-73-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Division" means the division of workers' compensation insurance compliance of the department of labor and industry ~~provided for in 2-15-1702~~ and the state coal mine inspectors employed by the division.

(2) "Excavations" and "workings" mean all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working places, whether abandoned or in use.

(3) "Gassy mine" means a mine is considered to be potentially gassy. The division may further define this term in its rules.

(4) "Mine" and "coal mine" mean all parts of the property of a mining plant under one management which contribute, directly or indirectly, to the mining or handling of coal.

(5) "Mine examiner" means a person charged with the examination of the condition of the mine before the miners are permitted to enter it and who is commonly known as the "fire boss".

(6) "Mine foreman" means a person who is charged with the general direction of the underground work or both the underground work and the outside work of a coal mine and who is commonly known and designated as "mine boss".

(7) "Operator", as applied to the party in control of a mine under this chapter, means the person, firm, or body corporate which is the immediate proprietor as owner or lessee of the plant and, as such, is responsible for the condition and management thereof.

(8) "Shaft" means any vertical opening through the strata which is or may be used for the purpose of ventilation or escape or for hoisting or lowering of men or material in connection with the mining of coal.

(9) "Slope" and "drift" mean respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft.""

Renumber: subsequent sections

34. Page 41, following line 4.
Insert: "2-15-1702,"

35. Page 42, line 2.
Strike: "workers'"
Following: "compensation"
Insert: "insurance"

36. Page 42, line 14.
Strike: "50"
Insert: "54, 55"

37. Page 42, line 16.
Strike: "49"
Insert: "53"

38. Page 42, line 18.
Strike: "50"
Insert: "55"

AND AS AMENDED DO PASS

Signed: Gene Thayer
Gene Thayer, Chairman

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 12
DATE 2/17/89
BILL NO. SB 428

Amendments to Senate Bill No. 428
First Reading Copy

Requested by Sen. Gene Thayer
For the Committee on Business and Industry

Prepared by Mary McCue
February 16, 1989

1. Title, line 12.
Strike: "2-15-1702,"

2. Title, line 19.
Following: "SECTIONS"
Insert: "2-15-1702,"

3. Page 2, lines 24 and 25.
Strike: "It" on line 24 through end of line 25

4. Page 3, following line 10.
Insert: "The legislature intends that the governor shall implement staggered terms in naming the initial members of the board."

5. Page 3, lines 20 and 21.
Following: "agency"
Strike: remainder of line 20 through "risk" on line 21

6. Page 4, line 1.
Strike: "safety programs"
Insert: "variable pricing levels within individual rate classifications"

7. Page 5, line 19.
Following: The"
Strike: "board is designated as"
Insert: "members must be appointed and compensated in the same manner as members of"

8. Page 5, line 20.
Strike: "for the purposes of"
Insert: "as provided in"

9. Page 8, line 10.
Following: "eliminated"
Insert: "and adequate actuarially determined reserves are determined"

10. Page 9, line 13.
Following: "33-2-705"
Insert: "based on earned premium and paid on revenue from the previous fiscal year"

Ex. #12
2/17/89

Renumber: subsequent sections

26. Page 39, line 15.
Following: "labor"
Insert: "and industry"

27. Page 40, line 22.
Following: "compensation"
Insert: "mutual"

28. Page 41, following line 3.
Insert: "NEW SECTION. Section 46. State fund to submit notice of coverage within thirty days -- penalty for failure. (1) The state fund shall, within 30 days after the issuance an insurance policy, submit to the division the notice of coverage stating the effective date of the policy insuring the employer and other information the division requires.

(2) The division may assess a penalty of no more than $200 against the state fund if, as a general business practice, it does not comply with the 30-day notice requirement.

NEW SECTION. Section 47. Policy remains in effect until canceled or replaced -- twenty-day notification of cancellation required. The insurance policy remains in effect until canceled. Cancellation may take effect only by written notice to the named insured and to the division at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding insurance policy issued to the insured. Nothing in this section prevents the state fund from canceling an insurance policy before a replacement policy is issued to the insured."

29. Page 41, following line 4.
Insert: "2-15-1702,"

30. Page 42, line 2.
Strike: "worker's"
Following: "compensation"
Insert: "insurance"

31. Page 42, line 14.
Strike: "50"
Insert: "51"

32. Page 42, line 16.
Strike: "49"
Insert: "50"

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 13
DATE 2/17/89
BILL NO. SB428

DEPARTMENT OF LABOR AND INDUSTRY

COMMISSIONER'S OFFICE

STAN STEPHENS, GOVERNOR
P.O.BOX 1728

STATE OF MONTANA

(406) 444-3555
HELENA, MONTANA 59624

February 17, 1989

TESTIMONY BEFORE THE SENATE BUSINESS COMMITTEE ON SENATE BILL 428

BY MIKE MICONE, COMMISSIONER OF LABOR AND INDUSTRY

Mr. Chairman and members of the Committee, my name is Mike Micone, Commissioner of Labor and Industry. I'm here to support Senate Bill 428 to separate the workers' compensation state fund from the Workers' Compensation Division.

Senate Bill 428 calls for a general reorganization of the Workers' Compensation Division. It would move the state insurance fund to the Department of Administration, while maintaining the regulatory functions in a separate division of the Department of Labor and Industry.

The workers' compensation vocational rehabilitation program would be transferred to the Employment Policy Division in the Department of Labor and Industry.

The state fund, as a workers' compensation insurer, would become a mutual insurer with its administration function attached to the Department of Administration. It would be managed by a board appointed by the governor. The board would pick an executive director to manage the day-to-day functions of the fund. The executive director and certain other management employees would be exempt from the state pay plan, with the management staff serving at the pleasure of the executive director.

The board would have the authority to contract out to private industry certain claims-servicing functions of the state compensation insurance fund.

The board would be bound by law to set the fund's insurance rates on an actuarially sound basis.

This is not a new idea; it was discussed during the last session, but not adopted as part of the Workers' Compensation reform legislation.

"AN EQUAL OPPORTUNITY EMPLOYER"

Exh. 15
2/17/89

The 1987 Legislature did make considerable changes in the workers' compensation law. This bill, like many others being heard this session, continues the reform started two years ago.

The workers' compensation system has been subject to criticism from all quarters. Some say the law is the problem, some say the courts are the problem and some maintain that poor management of the system is the problem.

This bill won't solve all the problems, but it will address what many see as an inherent problem with having the same state agency acting as an insurer as well as regulating the system.

We feel the workers' compensation should be operated more like a privately-run insurance company, and should have its insuring functions separated from its regulatory functions. It's a further refinement of the reform started two years ago.

I ask that you support Senate Bill 428.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 14
DATE 2/17/89
BILL NO. SB428

DEPARTMENT TESTIMONY

SB 428
State Mutual Insurance Fund

A. Purpose:

1.) To remove any conflict of interest that may currently exist between the State Compensation Insurance Fund and the workers' compensation regulatory authority of the Division.

2.) To establish an organizational structure which will ensure the solvency of the newly created state mutual insurer.

B. Rationale:

1.) The administration recognizes that sound management requires an organization to be financially solvent. Even though the current State Compensation Insurance Fund is a state agency and is supported by the strength of Montana state government, it is necessary for the organization to generate sufficient revenues to cover expected liabilities. Failure to do so puts an unreasonable burden on injured workers who are entitled to the statutory benefits and creates a false sense of financial security for employers who expect premiums to cover costs.

2.) The administration is convinced that the proposed structure will continue to provide employers with an alternative to obtaining the required coverage in a competitive market. Employers should continue

to have a choice. Not only price but service and dependability are important factors in making a decision of who will become a firm's insurer.

C. Overview:

1.) Establishes a five-member board of directors who are vested with the management and control of the Fund..

2.) Establishes the Fund as a mutual nonprofit independent public corporation.

3.) Allows the Board to appoint an executive director who has the responsibility for the Fund's operating management.

4.) Allows the Board to set all personnel salaries.

5.) Essentially operates in the same manner as a private carrier.

6.) Property of the Fund, including all monies, property, securities, etc., belong to the Fund and not the state.

7.) Controlled by current laws regulating domestic mutual insurers.

8.) Establishes an assigned risk ~~pool~~ plan so that those employers with poor experience may obtain coverage from either a private carrier or the State Fund. Currently the state fund take all applicants

9.) Allows the State Fund to refuse coverage.

10.) Continues the Fund as the exclusive carrier for state agencies.

Ex. #14
2/17/89

11.) Allows for the payment of dividends once the unfunded liability is wiped out.

12.) Maintains the current payroll classification system established by the National Rating Organization.

13.) Allows the Governor to implement the provisions of the reorganization by executive order but no later than October 1, 1989.

CONCLUSION:

Although the concept may be new to Montana, many other states, (eg., Arizona, Oregon, Minnesota, Idaho) follow this organizational format.

This Division has identified some technical problems that should be worked out as soon as possible. For that reason, I would support the Senator's request to put the bill in a subcommittee very briefly so that details can be addressed.

William R. Palmer
Interim Administrator
February 16, 1989

2/17/89

EXHIBITS WERE MISNUMBERED. THERE IS NO EXHIBIT NO. 15 FOR THIS DAY.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 16
DATE 2/17/89
BILL NO. SB 428

MONTANA - WORKERS' COMPENSATION - PLAN II

1987 Results: (000's omitted)

INSURANCE COMPANY	PREMIUM WRITTEN	PREMIUM EARNED	LOSSES	LOSS RATI
Aetna Cas & Sur Co.	$ 1,103	$ 1,150	$ 845	73%
AM Motorists	353	538	591	110
Associated Indemnity	580	523	283	54
City Ins. Co.	584	498	229	46
Connecticut Indemnity Ins.	124	1	41	4100
E. B. I.	6,347	6,553	20,752	317
Employers of Wausau	1,601	1,616	1,951	121
Federated Insurance Company	567	571	624	109
Fidelity & Casualty	511	484	290	60
Fire & Casualty Co of Conn.	1,346	1,301	2,173	167
Highlands Ins Co.	710	708	843	119
Home Indemnity	521	463	1,072	232
Industrial Indemnity	854	712	3,220	452
INA	899	821	586	71
Liberty Mutual	3,689	4,497	4,195	93
L. U. A.	765	767	788	103
National Union Fire	6,920	5,579	3,837	69
Nationwide Mutual Fire	702	592	551	93
Old Republic	953	1,095	5	1
Pacific Employers	2,743	3,441	2,477	72
Royal Ins Co.	1,531	1,694	1,021	60
Standard Fire Ins.	1,356	1,161	1,634	141
Transportation Ins. Co.	4,153	4,384	4,356	99
Travelers Indemnity	556	566	4,132	
Travelers Indemnity of America	58	56	50	72
Travelers Indemnity of Illinois	6,573	7,532	1,663	
Twin City Fire	4,049	3,631	957	26
New Hampshire Ins. Co.	25	32	24	75
TOTALS:(All Co's):	57,206	57,679	69,356	120

Statistical figures compiled by the Montana Insurance Department

SENATE BUSINESS & INDUST
EXHIBIT NO. 17
DATE 2/17/89
BILL NO. SB 428

MONTANA STATE AFL-CIO
APRIL 29 1956

JAMES W. MURRY
EXECUTIVE SECRETARY

110 WEST 13TH STREET
P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-1708

Testimony of Don Judge on Senate Bill 428 before the Senate Business and Industry Committee, February 17, 1989

Mr. Chairman, members of the committee, my name is Don Judge and I'm representing the Montana State AFL-CIO in support of Senate Bill 428.

I am unable to respond to the bill with inclusion of the amendments offered by Senator Thayer, but with those reservations, I can say that we recognize and endorse the goal of this bill, which is to eliminate the existing conflict in the Workers' Compensation Division, which by law must represent the interests of the insured and the insurer.

We have maintained for some time now that one of the chief causes of the existing fund's deficit was a political decision some years ago to hold down rates despite actuarial indications to the contrary. Had the state fund not been under those competing pressures at the time, that ill-fated decision would not have been likely. Under the system proposed by Senate Bill 428, no such political shenanigans would be likely.

We heartily support the bill's emphasis on the importance of safety to reduce workplace accidents. Such a healthy focus on the most serious problem facing the workers' compensation fund today will benefit not only the workers who suffer the injuries and sickness, but also the employers who must pay the costs. We also believe that creation of an assigned risk pool is a long overdue change and one that will curb the current practice of creaming the best risks while assigning the poor ones to the state fund.

We do have one concern. Many other states have systems similar to that being proposed here. Those successful systems often have precise mandates on the makeup of their governing boards. The proposal here is for three of the five members to represent state fund policyholders and three to represent private companies. It allows the appointment of employees of state fund policyholders. We urge you to consider amending the bill to adopt a tripartite system similar to that used in other states, with mandated representation by the business community, labor and the public. That way, none of the parties with legitimate direct interests in this issue will be left out.

All in all, we believe this is a good bill that aims to put the state workers' compensation system back on a sound footing, which we support. We urge you to consider our suggestion and to ultimately give Senate Bill 428 a "do pass" recommendation. Thank you.

PRINTED ON UNION MADE PAPER

AMERICA WORKS BEST WHEN WE SAY, UNION YES ✓

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 22
DATE 2/17/89
BILL NO. SB428

Amendments to Senate Bill No. 428
First Reading Copy

Requested by Sen. Gene Thayer
For the Committee on Business and Industry

Prepared by Mary McCue
February 16, 1989

1. Title, line 12.
Following: "LABOR"
Insert: "AND INDUSTRY"
Strike: "2-15-1702,"
Following: "2-18-103,"
Insert: "33-2-119,"

2. Title, line 13.
Following: "33-18-212,"
Insert: "37-72-101,"

3. Title, line 18.
Strike: "AND"
Following: "39-72-310,"
Insert: "50-71-102, AND 50-73-102,"

4. Title, line 19.
Following: "SECTIONS"
Insert: "2-15-1702,"

5. Page 2, lines 24 and 25.
Strike: "It" on line 24 through end of line 25

6. Page 3, following line 10.
Insert: "The legislature intends that the governor shall implement staggered terms in naming the initial members of the board."

7. Page 3, lines 20 and 21.
Following: "agency"
Strike: remainder of line 20 through "risk" on line 21

8. Page 4, line 1.
Strike: "safety programs"
Insert: "variable pricing levels within individual rate classifications"

9. Page 5, line 19.
Following: "The"
Strike: "board is designated as"
Insert: "members must be appointed and compensated in the same manner as members of"

10. Page 5, line 20.
Strike: "for the purposes of"
Insert: "as provided in"

Ex #22
2/17/18

11. Page 8, line 4.
Following: "council"
Insert: "and corresponding rates as a basis for setting its own rates"

12. Page 8, line 10.
Following: "eliminated"
Insert: "and adequate actuarially determined reserves are determined"

13. Page 9, line 13.
Following: "33-2-705"
Insert: "based on earned premium and paid on revenue from the previous fiscal year"

14. Page 11, line 3.
Strike: "coverage contracts"
Insert: "insurance policies"

15. Page 12, line 23.
Strike: "provided for in 2-15-1702"

16. Page 18, line 18.
Strike: "adviser"
Insert: "advisers"

17. Page 18, following line 22.
Insert: "The division and state fund may employ other attorneys or legal advisers as they consider necessary."

18. Page 19, line 6.
Strike: "duplicate receipts"
Insert: "summary reports of benefits"

19. Page 19, line 12.
Strike: "duplicate receipts"
Insert: "summary reports of benefits"

20. Page 20, line 7.
Strike: "employee"
Insert: "employer"

21. Page 22, line 21.
Strike: "Private insurers, plan No. 2,"
Insert: "Insurers"

22. Page 24, line 21.
Strike: "workers' compensation"

23. Page 25, lines 2 and 3.
Strike: "compensation insurance"

24. Page 25, line 4.
Following: "schedule."

Insert: "The state fund shall report fees billed in the form and at times required by the division."

25. Page 29, line 13.
Strike: "mutual insurance"

26. Page 29, lines 16 and 17.
Strike: "under plan for default"

27. Page 29, line 21.
Following: "due"
Insert: "or because of a significant change in liability exposure"

28. Page 29, line 22.
Strike: "right for failure to pay premiums"
Insert: "coverage"

29. Page 30, lines 20 and 21.
Strike: "industrial insurance expendable trust"
Insert: "state"

30. Page 38, line 23 through line 9, page 39.
Strike: section 43 in its entirety
Renumber: subsequent sections

31. Page 39, line 15.
Following: "labor"
Insert: "and industry"

32. Page 40, line 22.
Following: "compensation"
Insert: "mutual"

33. Page 41, following line 3.
Insert: "NEW SECTION. Section 45. State fund to submit notice of coverage within thirty days -- penalty for failure. (1) The state fund shall, within 30 days after the issuance of an insurance policy, submit to the division the notice of coverage stating the effective date of the policy insuring the employer and other information the division requires.

(2) The division may assess a penalty of no more than $200 against the state fund if, as a general business practice, the state fund does not comply with the 30-day notice requirement.

NEW SECTION. Section 46. Policy remains in effect until canceled or replaced -- twenty-day notification of cancellation required. The insurance policy remains in effect until canceled. Cancellation may take effect only by written notice to the named insured and to the division at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding insurance policy issued to the insured. Nothing in this section prevents the state fund from canceling an insurance policy before a replacement policy is issued to the insured.

EX #22
2/17/89

Section 47. Section 33-2-119, MCA, is amended to read:
"33-2-119. Suspension or revocation for violations and special grounds. (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has:

(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;

(b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in another insurer. In considering suspension or revocation, the commissioner shall consider all relevant factors, including whether:

(i) after the reinsurance transaction all parties will be in compliance with Montana law; and

(ii) the transaction will substantially reduce protection and service to Montana policyholders;

(c) failed to accept an equitable apportionment of assigened coverage as required by [section 13].

(2) The commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) is in unsound condition or in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay proper claims arising under its policies, whether any such claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to such third person, or without just cause compels such insured or claimant to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or such an insured to secure full payment or settlement of such claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus lines insurer under part 3 of this chapter.

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."

Section 48. Section 37-72-101, MCA, is amended to read:
"37-72-101. Construction blasting restrictions -- license

Ex #22
2/17/89

required -- definitions -- exemptions. (1) No person may engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the workers' compensation division.

(2) For the purposes of this chapter:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) "division" means the division of workers' compensation insurance compliance ~~division~~ of the department of labor and industry ~~provided for in 2-15-1702~~;

(d) "explosive" has the meaning given in 50-38-101;

(e) "magazine" has the meaning given in 50-38-101.

(3) Nothing in this chapter applies to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection must comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under and implementing 82-4-231(10)(e)."

Section 49. Section 50-71-102, MCA, is amended to read:

"50-71-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

(2) "Code" means a standard body of rules for safety formulated, adopted, and issued by the division under the provisions of this chapter.

(3) "Division" means the division of workers' compensation insurance compliance of the department of labor and industry ~~provided for in 2-15-1702~~.

(4) "Employee" and "worker" are defined as in 39-71-118.

(5) "Employer" is defined as in 39-71-117.

(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change."

Section 50. Section 50-73-102, MCA, is amended to read:

"50-73-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Division" means the division of workers' compensation

insurance compliance of the department of labor and industry ~~provided for in 2-15-1702~~ and the state coal mine inspectors employed by the division.

(2) "Excavations" and "workings" mean all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working places, whether abandoned or in use.

(3) "Gassy mine" means a mine is considered to be potentially gassy. The division may further define this term in its rules.

(4) "Mine" and "coal mine" mean all parts of the property of a mining plant under one management which contribute, directly or indirectly, to the mining or handling of coal.

(5) "Mine examiner" means a person charged with the examination of the condition of the mine before the miners are permitted to enter it and who is commonly known as the "fire boss".

(6) "Mine foreman" means a person who is charged with the general direction of the underground work or both the underground work and the outside work of a coal mine and who is commonly known and designated as "mine boss".

(7) "Operator", as applied to the party in control of a mine under this chapter, means the person, firm, or body corporate which is the immediate proprietor as owner or lessee of the plant and, as such, is responsible for the condition and management thereof.

(8) "Shaft" means any vertical opening through the strata which is or may be used for the purpose of ventilation or escape or for hoisting or lowering of men or material in connection with the mining of coal.

(9) "Slope" and "drift" mean respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft.""

Renumber: subsequent sections

34. Page 41, following line 4.
Insert: "2-15-1702,"

35. Page 42, line 2.
Strike: "workers'"
Following: "compensation"
Insert: "insurance"

36. Page 42, line 14.
Strike: "50"
Insert: "54, 55"

37. Page 42, line 16.
Strike: "49"
Insert: "53"

38. Page 42, line 18.
Strike: "50"
Insert: "55"

DATE 2/17/89

COMMITTEE ON Business & Industry

1 of 2

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppos
Dustin M Farmer	Horse Owner	406	✓	
Bob Stephens		406	✓	
Robert Stephens Jr	Better	406	✓	
Darlene Cashman	Portage Meadow Stables	406	✓	
George Hall	" "	406	✓	
Lucia Shadoan	Bozeman Chamber	428	✓ W/ amend	
Mary Palmer	Citizen interest	428	✓	
MIKE MICOREE	DEPT. LABOR INDUSTRY	428	✓	
Bob Morawic	Missoula Chamber	425	✓	
Diana Dowling	Lottery at request of Sen Stimatz	443	✓	
Bud Clinch	Mtn Water Dir	449	✓	
TED NEUMAN	~~GREAT FALLS~~ HOCKEY CLUB	406	✓	
AL G. K.	Helena	406	✓	
SID ERICKSON	MT Thoroughbred Breeders Assn	406	✓	
Gary Koopelin	Board of Horse Racing	406		
Rob Speer	OCA	413		
Jay Belden	State Fair	406	✓	
Mary Tudor	Action Park - Billings	406	✓	
Robert Baker	CBI Orion	428	✓ WITN ATTENDS	
Jacqueline Orrell	American Ins Assoc.	428	x with amd	
Ed Bell	Self as owner + Breeder	406	✓	
Joyce Bell	Self as owner + Breeder	406	✓	
Fred Nelson	MT Thoroughbred Breeders	406	✓	
Gary Amundson	United Tote	406	✓	
STEVE CHRISTIAN	SELF	406	✓	
James Midgley	Horse owner	406	✓	

(Please leave prepared statement with Secretary)

DATE 2/17/89

COMMITTEE ON Business & Industry

VISITORS' REGISTER

2 of 2

NAME	REPRESENTING	BILL #	Check One Support	Oppos
John Sa/mond	WETA	428	X	
Larry Semenza	Breeder	406	X	
Darolyn Wolff	TRAINER	406	X	
Lloyd A. Fitzgerald	Breeder	406	X	
George Wood	Mt Self Insurers Assn	428	X	
[illegible]	Alliance of Am. Insurers	428	X	
[illegible]	MT. Ret'd. L Assoc	428	X	
Ross Colson	Tool & Equip Inc	428	✓	
Robert L. Locke	FBS Insurance Baitels Agency	428	X w/o amend	
JM Tuttle	MT CHAMBER Co M	428	X	
KATHY ANDERSON	INDEPENDENT INSURANCE AGENTS ASSOC. OF MT	428	✓	
~~Drew Dawson~~	~~Dept Health~~	SB 407 454	✓	

(Please leave prepared statement with Secretary)

SENATE BILL NO. 428

INTRODUCED BY THAYER, NATHE, THOMAS, NOBLE, MEYER, DRISCOLL, PAVLOVICH, GRADY, MAZUREK, WILLIAMS, SMITH, SQUIRES, GLASER, RAPP-SVRCEK, RUSSELL, AKLESTAD, DEVLIN, RASMUSSEN, GRINDE, MARKS

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE STATE COMPENSATION MUTUAL INSURANCE FUND TO INSURE EMPLOYERS FOR WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LIABILITY; PROVIDING FOR A BOARD OF DIRECTORS; ESTABLISHING THE POWERS AND DUTIES OF THE BOARD AND THE CHIEF EXECUTIVE OFFICER OF THE STATE COMPENSATION MUTUAL INSURANCE FUND; TRANSFERRING THE OFFICE OF WORKERS' COMPENSATION JUDGE TO THE DEPARTMENT OF LABOR AND INDUSTRY; AMENDING SECTIONS 2-15-1014, ~~2-15-1702,~~ 2-18-103, 33-2-119, 33-17-502, 33-18-212, 37-72-101, 39-71-116, 39-71-201, 39-71-203, 39-71-206, 39-71-306 THROUGH 39-71-308, 39-71-403, 39-71-421, 39-71-604, 39-71-704, 39-71-901, 39-71-908, 39-71-910, 39-71-911, 39-71-913, 39-71-2303, 39-71-2307, 39-71-2308, 39-71-2321 THROUGH 39-71-2323, 39-71-2325, 39-71-2327, 39-71-2501, 39-72-201, AND 39-72-310, 50-71-102, AND 50-73-102, MCA; REPEALING SECTIONS 2-15-1702, 39-71-2301, 39-71-2302, 39-71-2304 THROUGH 39-21-2306, AND 39-71-2324, MCA; AND PROVIDING EFFECTIVE DATES."

There is no change on SB 428 and will not be reprinted. Please refer to second reading (yellow) for complete text.

THIRD READING

APPROVED BY COMM. ON
BUSINESS & INDUSTRY

SENATE BILL NO. 428

INTRODUCED BY THAYER, NATHE, THOMAS, NOBLE, MEYER, DRISCOLL, PAVLOVICH, GRADY, MAZUREK, WILLIAMS, SMITH, SQUIRES, GLASER, RAPP-SVRCEK, RUSSELL, AKLESTAD, DEVLIN, RASMUSSEN, GRINDE, MARKS

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE STATE COMPENSATION MUTUAL INSURANCE FUND TO INSURE EMPLOYERS FOR WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LIABILITY; PROVIDING FOR A BOARD OF DIRECTORS; ESTABLISHING THE POWERS AND DUTIES OF THE BOARD AND THE CHIEF EXECUTIVE OFFICER OF THE STATE COMPENSATION MUTUAL INSURANCE FUND; TRANSFERRING THE OFFICE OF WORKERS' COMPENSATION JUDGE TO THE DEPARTMENT OF LABOR AND INDUSTRY; AMENDING SECTIONS 2-15-1014, ~~2-15-1702,~~ 2-18-103, 33-2-119, 33-17-502, 33-18-212, 37-72-101, 39-71-116, 39-71-201, 39-71-203, 39-71-206, 39-71-306 THROUGH 39-71-308, 39-71-403, 39-71-421, 39-71-604, 39-71-704, 39-71-901, 39-71-908, 39-71-910, 39-71-911, 39-71-913, 39-71-2303, 39-71-2307, 39-71-2308, 39-71-2321 THROUGH 39-71-2323, 39-71-2325, 39-71-2327, 39-71-2501, 39-72-201, AND 39-72-310, 50-71-102, AND 50-73-102, MCA; REPEALING SECTIONS 2-15-1702, 39-71-2301, 39-71-2302, 39-71-2304 THROUGH 39-21-2306, AND 39-71-2324, MCA; AND PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 8] grants rulemaking authority to the newly created state fund to adopt or repeal rules or amend existing rules to implement the new state compensation mutual insurance fund. The chief purposes of creating the state fund as a mutual insurer and placing it in a department other than the department of labor are:

(1) to remove the inherent conflict between the interests of the workers' compensation division in regulating all workers' compensation insurers in this state, including the state compensation insurance fund, and the interests of the state fund as a workers' compensation insurer; and

(2) to ensure the solvency of the new state fund.

The legislature recognizes that the fund actuary has determined that at June 30, 1988, a full funding deficiency of $157.3 million existed for the present state compensation insurance fund. The legislature intends that the new state compensation mutual insurance fund adopt rules in a manner that will assure the solvency of the new fund. Rates must be set on an actuarially sound basis as required by state law. To further ensure the solvency of the state fund, it is not the workers' compensation insurer of last resort, as the

state fund presently is. The new state fund would not be bound to insure all employers who apply to it for workers' compensation coverage, except for state agencies. ~~It could refuse to insure an employer it considered a poor risk.~~

As the primary means of ensuring the solvency of the state fund, it must institute safety programs and set rates in a manner that awards employers who provide a safe working environment and penalizes employers who do not.

The legislature further intends that the new state fund institute programs to automate the processing of claims and payment of benefits. The state fund may contract out to the private sector certain claims administration and servicing functions if the state fund determines it to be cost-effective.

THE LEGISLATURE INTENDS THAT THE GOVERNOR SHALL IMPLEMENT STAGGERED TERMS IN NAMING THE INITIAL MEMBERS OF THE BOARD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Intent and purpose of plan. It is the intent and purpose of the state fund to allow employers the option to insure their liability for workers' compensation and occupational disease coverage with a nonprofit, independent public corporation. The state fund is a domestic mutual insurer. It is not required to insure any

employer in this state requesting coverage, and it may refuse coverage for an employer, except a state agency, ~~that the state fund determines to be a bad risk~~. The state fund must be neither more nor less than self-supporting. Premium rates must be set at a level sufficient to fund the insurance program, including the costs of administration, benefits, and adequate reserves. For the purpose of keeping the state fund solvent, it must implement ~~safety programs~~ VARIABLE PRICING LEVELS WITHIN INDIVIDUAL RATE CLASSIFICATIONS to reward an employer with a good safety record and penalize an employer with a poor safety record.

NEW SECTION. **Section 2.** Definitions. Unless the context requires otherwise, in [sections 1, 2, and 4 through 12] the following definitions apply:

(1) "Board" means the board of directors of the state compensation mutual insurance fund provided for in [section 3].

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Executive director" means the chief executive officer of the state compensation mutual insurance fund.

(4) "State fund" means the state compensation mutual insurance fund provided for in [section 4]. It is also known as compensation plan No. 3 or plan No. 3.

NEW SECTION. **Section 3.** Board of directors of the

state compensation mutual insurance fund. (1) There is a board of directors of the state compensation mutual insurance fund.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may employ its own staff.

(3) The board may provide for its own office space and the office space of the state fund.

(4) The board consists of five members appointed by the governor. The executive director of the state fund is an ex officio nonvoting member.

(5) At least three of the five members shall represent state fund policyholders and may be employees of state fund policyholders. At least three members of the board shall represent private, for-profit enterprises. A member of the board may not:

(a) represent or be an employee of an insurance company that is licensed to transact workers' compensation insurance under compensation plan No. 2; or

(b) be an employee of a self-insured employer under compensation plan No. 1.

(6) A member is appointed for a term of 4 years. The terms of board members must be staggered. A member of the board may serve no more than two 4-year terms. A member shall hold office until a successor is appointed and

qualified.

(7) The ~~board--is--designated--as~~ MEMBERS MUST BE APPOINTED AND COMPENSATED IN THE SAME MANNER AS MEMBERS OF a quasi-judicial board ~~for-the--purposes--of~~ AS PROVIDED IN 2-15-124, except that the requirement that at least one member be an attorney does not apply.

NEW SECTION. **Section 4. State compensation mutual insurance fund created.** There is a state compensation mutual insurance fund known as the state fund that is a nonprofit, independent public corporation established for the purpose of allowing an option for employers to insure their liability for workers' compensation and occupational disease coverage under this chapter. The state fund exists as a domestic mutual insurer as defined in 33-3-102.

NEW SECTION. **Section 5. Management of state fund -- powers and duties of the board.** (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of [sections 1, 2, and 4 through 12], as fully and completely as the governing body of a private

mutual insurance carrier, in order to fulfill the objectives and intent of [sections 1, 2, and 4 through 12].

NEW SECTION. **Section 6. Personal liability excluded.** The members of the board, the executive director, and employees of the state fund are not liable personally, either jointly or severally, for any debt or obligation created or incurred by the state fund.

NEW SECTION. **Section 7. Appointment of executive director -- management staff.** The board shall appoint an executive director of the state fund who has general responsibility for the operations of the state fund. The executive director must have executive level experience, with knowledge of the insurance industry. The executive director must receive compensation as set by the board and serve at the pleasure of the board. The executive director may hire the management staff of the state fund, each of whom serves at the pleasure of the executive director.

NEW SECTION. **Section 8. Powers of the state fund -- rulemaking.** For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, in connection with the coverage, provide employers' liability insurance. The state fund may charge a minimum yearly premium to cover its

administrative costs for coverage of a small employer.

(2) sue and be sued;

(3) adopt, amend, and repeal rules relating to the conduct of its business;

(4) enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(5) collect and disburse money received;

(6) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. The state fund must belong to the national council on compensation insurance and shall use the classifications of employment adopted by the national council AND CORRESPONDING RATES AS A BASIS FOR SETTING ITS OWN RATES.

(7) pay the amounts determined due under a policy of insurance issued by the state fund;

(8) hire personnel;

(9) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until the unfunded liability of the state fund is eliminated AND ADEQUATE ACTUARIALLY DETERMINED RESERVES ARE DETERMINED.

(10) perform all functions and exercise all powers of a domestic mutual insurer that are necessary, appropriate, or convenient for the administration of the state fund.

NEW SECTION. **Section 9. Property of the state fund -- investment required.** All premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. The money collected by the state fund may not be used for any other purpose. However, state fund money must be invested by the board of investments provided for in 2-15-1808.

NEW SECTION. **Section 10. State fund a mutual insurance carrier.** (1) The state fund is a domestic mutual insurer controlled by the laws relating to the regulation of domestic mutual insurers in this state. However, the formation, incorporation, bylaws, and bonding requirements set forth in Title 33, chapter 3, do not apply to the state fund.

(2) The commissioner of insurance may not terminate the operations of the state fund based on insolvency due to the unfunded liability that is recognized to exist on the date of passage of [sections 1, 2, and 4 through 12] and recognized in [section 12].

(3) The state fund is subject to the premium tax liability for insurers as provided in 33-2-705 BASED ON

EARNED PREMIUM AND PAID ON REVENUE FROM THE PREVIOUS FISCAL YEAR.

NEW SECTION. **Section 11. Assets and liabilities of prior state fund.** All assets and funds held by the state compensation insurance fund established in 39-71-2301 through 39-71-2308 and 39-71-2321 through 39-71-2327 must be transferred to the state fund, and the state fund shall assume liability for all outstanding claims and indebtedness of the previously existing state fund.

NEW SECTION. **Section 12. Unfunded liability.** (1) It is recognized at the date of creation of the state fund that there exists an unfunded liability that is being assumed by the newly created state fund for the prior state compensation insurance fund's liability for industrial injuries and occupational diseases that occurred prior to July 1, 1987. To assist the state fund in alleviating the unfunded liability, the premium taxes collected by the state from the following sources must be transferred to the newly created state fund:

(a) the state fund;

(b) excess or reinsurance policies on self-insurers writing coverage on a self-insurer's workers' compensation program under compensation plan No. 1; and

(c) private insurance carriers writing workers' compensation insurance under compensation plan No. 2.

(2) The premium taxes must be transferred to the state fund for payment of the unfunded liability. The premium tax payments must continue until the unfunded liability has been paid, at which time the premium taxes must be paid to the general fund.

NEW SECTION. **Section 13. Assigned risk plan.** (1) The commissioner of insurance shall promulgate and administer a plan to equitably apportion among the state fund, plan No. 3, and private insurers, plan No. 2, the coverage required by this chapter for employers who are unable to procure coverage through ordinary methods.

(2) All plan No. 2 insurers and the state fund shall subscribe to and participate in the assigned risk plan.

(3) If an insurer refuses to accept its equitable apportionment under the assigned risk plan, the commissioner of insurance may suspend or revoke the insurer's authority to issue workers' compensation ~~coverage contracts~~ INSURANCE POLICIES in this state.

Section 14. Section 39-71-116, MCA, is amended to read:

"**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as

defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the division ~~of workers' compensation~~ prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists).

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(4) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(5) "Days" means calendar days, unless otherwise specified.

(6) "Department" means the department of labor and industry.

(7) "Division" means the division of workers' compensation insurance compliance of the department of labor and industry ~~provided for in 2-15-1702~~.

(8) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(9) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state ~~compensation insurance~~ fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(10) "Invalid" means one who is physically or mentally incapacitated.

(11) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

(12) "Order" means any decision, rule, direction,

requirement, or standard of the division or any other determination arrived at or decision made by the division.

(13) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year; provided, that an estimate may be made by the division for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the division, as the case may actually be, on December 31 of such current year.

(14) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss, or both.

(15) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker is unable to return to work in the worker's job pool after exhausting

all options set forth in 39-71-1012.

(16) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

(17) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(18) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(19) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(20) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(21) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

(22) "Year", unless otherwise specified, means calendar

year."

Section 15. Section 39-71-201, MCA, is amended to read:

"**39-71-201. Administration fund.** (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the division must administer are to be paid upon lawful appropriation. The following ~~moneys~~ money collected by the division ~~shall~~ must be deposited in the state treasury to the credit of the workers' compensation administrative fund and ~~shall~~ must be used for the administrative expenses of the division:

(a) all fees and penalties provided in 39-71-205 and 39-71-304;

(b) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state ~~insurance~~ fund. The assessments ~~shall~~ must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the

chapter, during the preceding calendar year. However, no assessment of the plan No. 1 employer or plan No. 2 insurer ~~shall~~ may be less than $200. The assessments ~~shall~~ must be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 ~~shall~~ must be assessed an amount sufficient to fund its direct costs and an equitable portion of the indirect costs as referred to above. Other sources of revenue, including unexpended funds from the preceding fiscal year, ~~shall~~ must be used to reduce the costs before levying the assessments.

(2) The administration fund ~~shall~~ must be debited with expenses incurred by the division in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the division either within or without the state.

(3) Disbursements from the administration money ~~shall~~ must be made after being approved by the division upon claim therefor."

Section 16. Section 39-71-203, MCA, is amended to

read:

"**39-71-203. Powers of division -- rules ~~---staffing.~~** (1) The division is hereby vested with full power, authority, and jurisdiction to do and perform any and all things~~,--whether--herein--specifically--designated---or---in addition--thereto,~~ that are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

(2) The division may adopt rules to carry out the provisions of this chapter.

~~(3)--The-division-shall-employ-sufficient-personnel--to allow--it--to--meet-the-claims-processing-goals-contained-in 39-71-604.-The-division-shall--implement--staffing--patterns that-are-supported-by-indicators-of-workload.--The-open-file is--the--workload--indicator--for-claims-processing,-and-the number-of-open-claims-per-claims-examiner-may--not--be--less than--300.--The--claims--support--staff,-including-the-file, medical-pay,-and-new-claims-units,-may-not-exceed--two--FTEs per--claims--examiner.--The--administrative-and-underwriting staffing-must-be-based--on--the--number--of--premium--paying policyholders---and--may--not--exceed--1.4--FTEs--per--1,000 policyholders.~~

~~(4)--The-division-administrator-shall-submit-a--revised operation--plan-to-the-budget-office-for-review-and-approval and-to-the-legislative-finance-committee-for-review-whenever~~

~~increases-or-decreases-of-staff-are-necessary--to--implement the-provisions-of-subsection-(3).~~

~~(5)--Funds-from-the-state-special-revenue-fund-shall-be used-to-implement-subsection-(3).~~"

Section 17. Section 39-71-206, MCA, is amended to read:

"39-71-206. Legal ~~advisers~~ adviser ADVISERS of division and state fund. ~~(1)~~ The attorney general ~~shall be~~ is the legal adviser of the division and the state fund and shall represent ~~it~~ either entity in all proceedings whenever ~~so~~ if requested by the division or state fund ~~any member thereof~~. THE DIVISION AND STATE FUND MAY EMPLOY OTHER ATTORNEYS OR LEGAL ADVISERS AS THEY CONSIDER NECESSARY.

~~(2)--The-division-may,-in-the-investigation-and-defense of--cases-under-plan-No.-3-of-the-Workers'-Compensation-Act, employ-such-other-attorney-or--legal--adviser--as--it--deems necessary--and--pay--for--the--same--out--of--the-industrial insurance-account-in-the-expendable-trust-fund.~~"

Section 18. Section 39-71-306, MCA, is amended to read:

"39-71-306. ~~Plan--one--employers-and-plan-two-insurers~~ Insurers to file ~~duplicate--receipts~~ SUMMARY REPORTS OF BENEFITS paid for injuries and statements of medical expenditures. Every ~~employer-coming-under-the-provisions--of compensation--plan--No.-1-and-every-insurer-coming-under-the~~

~~provisions-of-compensation-plan-No.-2~~ insurer shall, on or before the 15th day of each and every month, file with the division:

(1) ~~duplicate-receipts~~ SUMMARY REPORTS OF BENEFITS for all payments made during the previous month to injured workers or their beneficiaries or dependents; and

(2) statements showing the amounts expended during the previous month for medical, surgical, and hospital services for injured workers and for the burial of deceased workers."

Section 19. Section 39-71-307, MCA, is amended to read:

"39-71-307. Employers and insurers to file reports of accidents. (1) Every employer ~~of labor~~ and every insurer is ~~hereby~~ required to file with the division, under ~~such~~ division rules ~~as-the-division-may-from-time-to-time-make~~, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to ~~such--person~~ the employee. ~~Such~~ The reports ~~shall~~ must be furnished to the division in ~~such~~ the form and ~~such~~ detail as the division ~~shall--from-time-to-time-prescribe~~ prescribes and ~~shall make~~ must provide specific answers to all questions required by the division under its rules. ~~,--except,-in-case-he~~ However, if an employee EMPLOYER is unable to answer ~~any--such questions,--a--good-and-sufficient-reason-shall-be-given-for~~

~~such failure~~ a question, he shall state the reason he is unable to answer.

(2) Every ~~insurance company~~ insurer transacting business under this chapter shall, at the time and in the manner prescribed by the division, make and file with the division ~~such~~ the reports of accidents as the division ~~may require~~ requires."

Section 20. Section 39-71-308, MCA, is amended to read:

"**39-71-308. Neglect or refusal of public corporation to file payroll reports -- arbitrary assessment by division.** ~~Whenever--any~~ If a public corporation insured by the state ~~compensation insurance~~ fund neglects or refuses to file prescribed payroll reports of its employees, the division may levy an arbitrary assessment upon ~~such~~ the public corporation in an amount of $75 for each ~~such~~ assessment, ~~which assessments shall~~ The assessment must be collected in the manner provided in this chapter for the collection of assessments."

Section 21. Section 39-71-403, MCA, is amended to read:

"**39-71-403. Plan three exclusive for state agencies -- election of plan by other public corporations.** (1) ~~Where~~ If a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, ~~shall be~~

are exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by any state agency ~~shall be~~ are considered to be ordinary and necessary expense of the agency, and the agency shall make appropriation of and pay ~~such~~ the sums into the state ~~compensation insurance~~ fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, employer; plan No. 2, insurer; or plan No. 3, state ~~insurance~~ fund; separately or jointly with any other public corporation, other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance. A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and chapter 72 and to discharge all liabilities that reasonably incur during the fiscal year for which the

election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and chapter 72 and for actual and necessary expenses required for the efficient administration of the fund.

(4) All money in the fund established under subsection (3) not needed to meet immediate expenditures must be invested by the governing body of the public corporation, and all proceeds of the investment shall be credited to the fund."

Section 22. Section 39-71-421, MCA, is amended to read:

"**39-71-421. Financial incentives to institute safety programs.** ~~The state compensation insurance fund, plan No. 3, and private~~ Private ~~insurers, plan No. 2,~~ INSURERS may provide financial incentives to an employer who implements a formal safety program. ~~The insurance carrier~~ An insurer may provide to an employer a premium discount that reflects the degree of risk diminished by the implemented safety program."

Section 23. Section 39-71-604, MCA, is amended to read:

"**39-71-604. Application for compensation.** (1) Where If a worker is entitled to benefits under this chapter, the worker shall file with the insurer or the division all reasonable information needed by the insurer to determine

compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the division without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.

(2) Where If death results from an injury, the parties entitled to compensation or someone in their behalf shall file a claim with the insurer or the division. The claim must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the division.

~~(3) The goal of the division is to process all claims for compensation within 14 days after initial acceptance of liability for a claim.~~"

Section 24. Section 39-71-704, MCA, is amended to read:

"**39-71-704. Payment of medical, hospital, and related services -- fee schedules and hospital rates.** (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following ~~shall~~ must be furnished:

(a) After the happening of the injury, the insurer

shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the division for the injuries sustained.

(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(2) A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, ~~shall~~ must be established annually by the ~~workers'--compensation~~ division and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. Medical fees must be based on the median fees as billed to the state ~~compensation insurance~~ fund during the year preceding the adoption of the schedule. THE STATE FUND SHALL REPORT FEES BILLED IN THE FORM AND AT THE TIMES REQUIRED BY THE DIVISION. The division shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for

services under the schedule, and the method of determining the median of billed medical fees. These rules ~~shall~~ must be modeled on the 1974 revision of the 1969 California Relative Value Studies.

(3) Beginning January 1, 1988, the division shall establish rates for hospital services necessary for the treatment of injured workers. Approved rates must be in effect for a period of 12 months from the date of approval. The division may coordinate this ratesetting function with other public agencies that have similar responsibilities.

(4) Notwithstanding subsection (2), beginning January 1, 1988, and ending January 1, 1990, the maximum fees payable by insurers must be limited to the relative value fee schedule established in January 1987. Notwithstanding subsection (3), the hospital rates payable by insurers must be limited to those set in January 1988, until December 31, 1989."

Section 25. Section 39-71-901, MCA, is amended to read:

"39-71-901. Definitions. As used in this part, the following definitions apply:

(1) "Vocationally handicapped" means a person who has a medically certifiable permanent impairment which is a substantial obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed,

considering such factors as the person's age, education, training, experience, and employment rejection.

(2) "Certificate" means documentation issued by the division ~~of--workers'--compensation~~ to an individual who is vocationally handicapped.

(3) "Fund" means the subsequent injury fund."

Section 26. Section 39-71-908, MCA, is amended to read:

"39-71-908. Notification of fund of its potential liability under part -- review by fund. Not less than 90 or more than 150 days before the expiration of 104 weeks after the date of injury, the ~~employer,--carrier,--or--the--industrial insurance--fund,--as--the--case--may--be,~~ insurer shall notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after the date of the injury. The fund thereafter may review, at reasonable times, such information as the ~~employer,--carrier,--or--industrial insurance--fund~~ insurer has regarding the accident and the nature and extent of the injury and disability."

Section 27. Section 39-71-910, MCA, is amended to read:

"39-71-910. Procedure for resolving disputes as to liability under part. (1) If an employee was employed or retained in employment under the provisions of this part and a dispute or controversy arises as to payment of benefits or

the liability therefor, the division shall hold a hearing and resolve all disputes. On motion made in writing by the ~~employer,--carrier,--or--industrial--insurance--fund~~ insurer, the administrator shall join the fund as a party defendant.

(2) The division, within 5 days of the entry of an order joining the fund as a party defendant, shall give the fund written notice thereof not less than 20 days before the date of hearing and shall include the ~~name~~ names of the employee and the ~~employer~~ insurer and the date of the alleged injury or disability. The fund named as a defendant ~~shall--have~~ has 10 days after the date of notification to file objections to being named as a party defendant. On the date of the hearing at which the liability of the parties is determined, the hearing examiner first shall hear arguments and take evidence concerning the joinder as party defendant. If the fund has filed timely objection and if argument and evidence warrant, the hearing examiner shall grant a motion to dismiss.

(3) At the time of the hearing, the ~~employer~~ insurer and fund may appear, cross-examine witnesses, give evidence, and defend both on the issue of liability of the ~~employer~~ insurer to the employee and on the issue of the liability of the fund.

(4) The hearing examiner shall make findings of fact and conclusions of law determining the respective liability

of the ~~employer~~ insurer and the fund."

Section 28. Section 39-71-911, MCA, is amended to read:

"**39-71-911. Obligation to make payments on behalf of fund not an independent liability.** The obligation imposed by this part on the ~~employer, carrier, or industrial insurance fund~~ insurer to make payments on behalf of the fund does not impose an independent liability on the ~~employer, carrier, or industrial insurance fund~~ insurer."

Section 29. Section 39-71-913, MCA, is amended to read:

"**39-71-913. Payments by fund directly to persons entitled.** If the ~~employer, carrier, or the industrial insurance fund~~ insurer does not make the payments on behalf of the fund, the fund may make the payments directly to the persons entitled to the payments."

Section 30. Section 39-71-2303, MCA, is amended to read:

"**39-71-2303. Manner of electing -- contract or policy of insurance -- payment of premium.** The ~~division~~ state fund shall prescribe the procedure by which ~~employers~~ an employer may elect to be bound by compensation plan No. 3, the effective time of ~~such~~ the election, and the manner in which ~~such~~ the election is terminated for reasons other than default in payment of premiums. Every employer electing to

be bound by compensation plan No. 3 ~~shall~~ must receive from the ~~division~~ state fund a contract or policy of insurance in a form approved by the division. The premium ~~thereon shall~~ must be paid by the employer to the ~~division~~ state fund at such times as the ~~division shall prescribe~~ state fund prescribes and ~~shall~~ must be paid over by the ~~division~~ state fund to the state treasurer to the credit of the ~~industrial insurance expendable trust~~ state mutual ~~insurance~~ fund."

Section 31. Section 39-71-2307, MCA, is amended to read:

"**39-71-2307. Cancellation of coverage ~~under plan for default~~ -- thirty days' notice required.** The ~~division is hereby authorized in its discretion to~~ state fund may cancel an employer's right to operate under plan No. 3 of the Workers' Compensation Act for failure to pay the premiums due OR BECAUSE OF A SIGNIFICANT CHANGE IN LIABILITY EXPOSURE. When the ~~division makes an order canceling~~ state fund cancels an employer's ~~right for failure to pay premiums~~ COVERAGE, ~~the division~~ it shall notify the employer of its intent to cancel the employer at least 30 days before the cancellation becomes effective. After the cancellation date, the employer ~~shall have~~ has the same status as an employer who is not enrolled under the Workers' Compensation Act."

Section 32. Section 39-71-2308, MCA, is amended to read:

"39-71-2308. Collection in case of default. (1) If ~~any~~ an employer under plan No. 3 ~~shall default~~ defaults in any payment to the ~~division~~ state fund, the state fund may collect the sum due ~~may be collected by an action at law~~ in a civil action in the name of the state.~~,~~ ~~and such right of action shall be~~ The right of action is cumulative.

(2) ~~When~~ If an employer's right to operate has been canceled by the ~~division~~ state fund for failure to pay premiums and ~~when the division in its discretion~~ the state fund finds that the property and assets of the employer are not sufficient to pay the premiums, the ~~division~~ state fund may compromise the claim for premiums and accept a payment of an amount less than the total amount due."

Section 33. Section 39-71-2321, MCA, is amended to read:

"39-71-2321. What to be deposited in ~~industrial insurance expendable trust~~ STATE fund. All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money ~~shall~~ must be deposited in the ~~industrial insurance expendable trust~~ state fund."

Section 34. Section 39-71-2322, MCA, is amended to read:

"39-71-2322. Money in ~~industrial insurance~~ state fund held in trust -- disposition of funds upon repeal of

chapter. The ~~moneys~~ money coming into the ~~industrial insurance expendable trust~~ state fund ~~shall~~ must be held in trust for the purpose for which ~~such moneys were~~ the money was collected.~~,~~ ~~and if this chapter shall be hereafter~~ If this chapter is repealed, ~~such moneys shall be~~ the money is subject to ~~such~~ the disposition ~~as may be~~ provided by the legislature repealing this chapter. In ~~default of such~~ the absence of a legislative provision, distribution ~~thereof shall~~ must be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing."

Section 35. Section 39-71-2323, MCA, is amended to read:

"39-71-2323. Surplus in ~~industrial insurance expendable trust~~ state fund -- payment of dividends. If at the end of any fiscal year there exists in the ~~industrial insurance expendable trust~~ state fund an excess of assets over liabilities and a reasonable surplus, such liabilities to include necessary reserves, which excess may be divided safely, then the ~~division~~ state fund may declare a dividend in ~~such~~ the manner as the rules of the ~~division may~~ state fund prescribe to those employers who have paid premiums into the ~~industrial insurance expendable trust~~ state fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or proportion of the

balance to which the employer is entitled as dividends, the ~~division~~ state fund shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year."

Section 36. Section 39-71-2325, MCA, is amended to read:

"39-71-2325. ~~Division~~ State fund to keep accounts of segregations. The ~~division~~ state fund shall keep an accurate account of all ~~such~~ the segregations of the ~~industrial insurance expendable trust~~ state fund and shall divert from the fund any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security."

Section 37. Section 39-71-2327, MCA, is amended to read:

"39-71-2327. Earnings of ~~industrial insurance expendable trust~~ state fund to be credited to fund -- improper use a felony. All earnings made by the ~~industrial insurance expendable trust~~ state fund by reason of interest paid for the deposit thereof or otherwise ~~shall~~ must be credited to and become a part of the fund, and the making of profit, either directly or indirectly, by any person out of the use of the fund ~~shall constitute~~ is a felony. ~~and on conviction thereof shall subject the person making such~~

~~profit to imprisonment in the state penitentiary for a term not exceeding 2 years or a fine not exceeding $5,000 or both such fine and imprisonment.~~ A person convicted of an offense under this section is punishable by imprisonment in the state prison for a term not to exceed 2 years or a fine of not more than $5,000, or both."

Section 38. Section 39-72-201, MCA, is amended to read:

"39-72-201. Administration of chapter. This chapter ~~shall be~~ is administered by the division ~~of workers' compensation~~."

Section 39. Section 39-72-310, MCA, is amended to read:

"39-72-310. Occupational disease coverage under workers' compensation plans. (1) Every employer enrolled under compensation plan No. 1 ~~(Title 39, chapter 71, part 21)~~, every insurer ~~writing workers' compensation coverage~~ under compensation plan No. 2 ~~(Title 39, chapter 71, part 22)~~, and the state ~~compensation insurance~~ fund under compensation plan No. 3 ~~(Title 39, chapter 71, part 23)~~, all provided for under the Workers' Compensation Act, are considered to also provide full coverage for claims under this chapter. Any policy of insurance for workers' compensation coverage under the Workers' Compensation Act written by a private insurance carrier or the state

compensation-insurance fund is considered to provide full occupational disease coverage under the provisions of this chapter.

(2) Except as provided in this chapter, the division shall apply the appropriate provisions of Title 39, chapter 71, parts 21, 22, and 23, to the administration of The Occupational Disease Act of Montana in the same manner as they are applied to the administration of the Workers' Compensation Act.

(3) Under compensation plan No. 3, any premiums and other receipts held by the ~~division~~ state fund for occupational disease insurance coverage ~~shall~~ must be transferred ~~and become part of~~ to the workers' compensation industrial insurance account, and payments for occupational disease claims by the state fund ~~shall~~ must be paid out of the industrial insurance account."

Section 40. Section 2-18-103, MCA, is amended to read:

"**2-18-103. Officers and employees excepted.** Parts 1 and 2 do not apply to the following positions in state government:

(1) elected officials;

(2) county assessors and their chief deputy;

(3) officers and employees of the legislative branch;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the

governor, appointed by the legislature, or appointed by other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) teachers under the authority of the department of institutions;

(11) investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;

(12) four professional staff positions under the board of oil and gas conservation; and

(13) assistant director for security of the Montana state lottery; and

(14) executive director and employees of the state compensation mutual insurance fund."

Section 41. Section 33-17-502, MCA, is amended to read:

"**33-17-502. Prohibition on holding out as consultant**

-- **receiving** fee. (1) Any person not licensed as an insurance consultant in this state who identifies or holds himself out to be an insurance consultant without having been licensed as an insurance consultant under this part or any person who uses any other designation or title which is likely to mislead the public and holds himself out in any manner as having particular insurance qualifications other than those for which he may be otherwise licensed or otherwise qualified is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(2) Any person not licensed as an insurance consultant with respect to the relevant kinds of insurance who receives any fee for examining, appraising, reviewing, or evaluating any insurance policy, annuity or pension contract, plan, or program or who shall make recommendations or give advice with regard to any of the above without first having been licensed by the commissioner as an insurance consultant is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(3) Nothing in this part applies to:

(a) licensed attorneys at law in this state acting in their professional capacity;

(b) an actuary or a certified public accountant who provides information, recommendations, advice, or services in his professional capacity if neither he nor his employer

receives any compensation directly or indirectly on account of any insurance, bond, annuity or pension contract that results in whole or part from that information, recommendation, advice, or services; or

(c) a duly licensed casualty insurance agent who accepts a fee from an insured for placement through the state compensation mutual insurance fund as provided in 33-18-212."

Section 42. Section 33-18-212, MCA, is amended to read:

"**33-18-212. Illegal dealing in premiums -- improper charges for insurance.** (1) ~~No~~ A person ~~shall~~ may not willfully collect any sum as premium or charge for insurance, which insurance is not then provided or is not in due course to be provided (subject to acceptance of the risk by the insurer) by an insurance policy issued by an insurer as authorized by this code.

(2) ~~No~~ A person ~~shall~~ may not willfully collect as premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance and, as specified in the policy, in accordance with the applicable classifications and rates as filed with and approved by the commissioner; or in cases where classifications, premiums, or rates are not required by this code to be so filed and approved, such premiums and charges

~~shall~~ may not be in excess of or less than those specified in the policy and as fixed by the insurer. This provision ~~shall~~ may not be deemed to prohibit the charging and collection, by surplus lines agents licensed under chapter 2, part 3, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. It ~~shall~~ may not be ~~deemed~~ considered to prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy. The provision of this subsection does not prohibit the collection from an insured of a placement fee, not to exceed 7 1/2% of the annual premium, for placement through the state compensation mutual insurance fund by a duly licensed casualty insurance agent. This placement fee is not a premium as defined in 33-15-102.

(3) Each violation of this section ~~shall--be~~ is punishable under 33-1-104."

~~**Section 43.** Section 2-15-1702, MCA, is amended to read:~~

~~"2-15-1702. Division of workers' compensation insurance compliance -- head. (1) There is a division of workers' compensation insurance compliance within the department. The division head is an administrator appointed by the governor as are directors in accordance with~~

~~2-15-111.~~

~~(2) The division is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the division may hire its own personnel, and 2-15-121(2)(d) does not apply.~~"

Section 43. Section 2-15-1014, MCA, is amended to read:

"**2-15-1014. Office of workers' compensation judge -- allocation -- appointment -- salary.** (1) There is the office of workers' compensation judge. The office is allocated to the department of ~~administration~~ labor AND INDUSTRY for administrative purposes only as prescribed in 2-15-121.

(2) The governor shall appoint the workers' compensation judge for a term of 6 years in the same manner provided by Title 3, chapter 1, part 10, for the appointment of supreme or district court judges. A vacancy ~~shall~~ must be filled in the same manner as the original appointment.

(3) To be eligible for workers' compensation judge, a person must:

(a) have the qualifications necessary for district court judges found in Article VII, section 9, of the Montana constitution;

(b) devote full time to the duties of workers' compensation judge and not engage in the private practice of law.

(4) The workers' compensation judge is entitled to the same salary and other emoluments as that of a district judge but ~~shall~~ must be accorded retirement benefits under the public employees' retirement system."

Section 44. Section 39-71-2501, MCA, is amended to read:

"**39-71-2501. (Temporary) Definitions.** As used in this part, the following definitions apply:

(1) "Board" means the board of examiners created in 2-15-1007.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Employer" has the meaning set forth in 39-71-117.

(4) "Payroll" means the payroll of an employer for each of the calendar quarters ending March 31, June 30, September 30, and December 31, for all employments covered under 39-71-401.

(5) "State fund" means the state compensation MUTUAL insurance fund ~~referred to in 39-71-2301~~.

(6) "Tax" means the workers' compensation payroll tax provided for in 39-71-2503.

(7) "Tax account" means the workers' compensation tax account created by 39-71-2504. (Terminates June 30, 1991--sec. 10, Ch. 664, L. 1987.)"

NEW SECTION. **SECTION 45.** STATE FUND TO SUBMIT NOTICE

OF COVERAGE WITHIN THIRTY DAYS -- PENALTY FOR FAILURE. (1) THE STATE FUND SHALL, WITHIN 30 DAYS AFTER THE ISSUANCE OF AN INSURANCE POLICY, SUBMIT TO THE DIVISION THE NOTICE OF COVERAGE STATING THE EFFECTIVE DATE OF THE POLICY INSURING THE EMPLOYER AND OTHER INFORMATION THE DIVISION REQUIRES.

(2) THE DIVISION MAY ASSESS A PENALTY OF NO MORE THAN $200 AGAINST THE STATE FUND IF, AS A GENERAL BUSINESS PRACTICE, THE STATE FUND DOES NOT COMPLY WITH THE 30-DAY NOTICE REQUIREMENT.

NEW SECTION. **SECTION 46.** POLICY REMAINS IN EFFECT UNTIL CANCELED OR REPLACED -- TWENTY-DAY NOTIFICATION OF CANCELLATION REQUIRED. THE INSURANCE POLICY REMAINS IN EFFECT UNTIL CANCELED. CANCELLATION MAY TAKE EFFECT ONLY BY WRITTEN NOTICE TO THE NAMED INSURED AND TO THE DIVISION AT LEAST 20 DAYS PRIOR TO THE DATE OF CANCELLATION. HOWEVER, THE POLICY TERMINATES ON THE EFFECTIVE DATE OF A REPLACEMENT OR SUCCEEDING INSURANCE POLICY ISSUED TO THE INSURED. NOTHING IN THIS SECTION PREVENTS THE STATE FUND FROM CANCELING AN INSURANCE POLICY BEFORE A REPLACEMENT POLICY IS ISSUED TO THE INSURED.

SECTION 47. SECTION 33-2-119, MCA, IS AMENDED TO READ:

"**33-2-119. Suspension or revocation for violations and special grounds.** (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the

insurer has:

(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;

(b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in another insurer. In considering suspension or revocation, the commissioner shall consider all relevant factors, including whether:

(i) after the reinsurance transaction all parties will be in compliance with Montana law; and

(ii) the transaction will substantially reduce protection and service to Montana policyholders;

(c) failed to accept an equitable apportionment of assigned coverage as required by [section 13].

(2) The commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) is in unsound condition or in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect

to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay proper claims arising under its policies, whether any such claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to such third person, or without just cause compels such insured or claimant to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or such an insured to secure full payment or settlement of such claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus lines insurer under part 3 of this chapter.

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been

commenced in any state."

SECTION 48. SECTION 37-72-101, MCA, IS AMENDED TO READ:

"37-72-101. Construction blasting restrictions -- license required -- definitions -- exemptions. (1) No person may engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the workers' compensation division.

(2) For the purposes of this chapter:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) "division" means the division of workers' compensation ~~division~~ insurance compliance of the department of labor and industry ~~provided for in 2-15-1702~~;

(d) "explosive" has the meaning given in 50-38-101;

(e) "magazine" has the meaning given in 50-38-101.

(3) Nothing in this chapter applies to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection must comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under and implementing 82-4-231(10)(e)."

SECTION 49. SECTION 50-71-102, MCA, IS AMENDED TO READ:

"50-71-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

(2) "Code" means a standard body of rules for safety formulated, adopted, and issued by the division under the provisions of this chapter.

(3) "Division" means the division of workers'

compensation insurance compliance of the department of labor and industry ~~provided-for-in-2-15-1702~~.

(4) "Employee" and "worker" are defined as in 39-71-118.

(5) "Employer" is defined as in 39-71-117.

(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change."

SECTION 50. SECTION 50-73-102, MCA, IS AMENDED TO READ:

"50-73-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Division" means the division of workers' compensation insurance compliance of the department of labor and industry ~~provided--for-in-2-15-1702~~ and the state coal mine inspectors employed by the division.

(2) "Excavations" and "workings" mean all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working places, whether abandoned or in use.

(3) "Gassy mine" means a mine is considered to be potentially gassy. The division may further define this term in its rules.

(4) "Mine" and "coal mine" mean all parts of the

property of a mining plant under one management which contribute, directly or indirectly, to the mining or handling of coal.

(5) "Mine examiner" means a person charged with the examination of the condition of the mine before the miners are permitted to enter it and who is commonly known as the "fire boss".

(6) "Mine foreman" means a person who is charged with the general direction of the underground work or both the underground work and the outside work of a coal mine and who is commonly known and designated as "mine boss".

(7) "Operator", as applied to the party in control of a mine under this chapter, means the person, firm, or body corporate which is the immediate proprietor as owner or lessee of the plant and, as such, is responsible for the condition and management thereof.

(8) "Shaft" means any vertical opening through the strata which is or may be used for the purpose of ventilation or escape or for hoisting or lowering of men or material in connection with the mining of coal.

(9) "Slope" and "drift" mean respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft."

NEW SECTION. **Section 51.** Repealer. Sections 2-15-1702, 39-71-2301, 39-71-2302, 39-71-2304 through

39-71-2306, and 39-71-2324, MCA, are repealed.

NEW SECTION. **Section 52.** Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **Section 53.** Codification instruction. (1) [Sections 1, 2, and 4 through 12] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 1, 2, and 4 through 12].

(2) [Section 3] is intended to be codified as an integral part of Title 2, chapter 15, part 10, and the provisions of Title 2, chapter 15, part 10, apply to [section 3].

(3) [Section 13] is intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [section 13].

NEW SECTION. **Section 54.** Reorganization procedure. The provisions of sections 2-15-131 through 2-15-137 govern the creation of the state compensation mutual insurance fund and the transfer of the various functions contained in [this act] from the state ~~workers'~~ compensation INSURANCE fund to the state compensation mutual insurance fund.

NEW SECTION. **Section 55.** Implementation. (1) The governor shall by executive order implement the provisions

of [this act].

(2) The governor may by executive order assign to the state compensation mutual insurance fund, in a manner consistent with [this act], functions allocated to the workers' compensation state fund provided for in Title 39, chapter 71, part 23, by the 51st legislature and not transferred by [this act].

NEW SECTION. **Section 56.** Effective dates. (1) [Sections 3, 7, ~~50~~ 54, 55, and this section] are effective on passage and approval.

(2) [Sections 1, 2, 4 through 6, and 8 through ~~49~~ 53] are effective upon signing of the executive order under [section ~~50~~ 55] or on October 1, 1989, whichever occurs earlier.

-End-

Form CS-32
Rev. 1985

STATUS SHEET

51st LEGISLATIVE SESSION

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CONSIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CONCURRED IN DATE	BE NOT CONCURRED IN DATE	BE CONCURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
SB 309	2/21	✓ 3/16		Tabled 3-20-89							
" 315	2/22	✓ 3/14						✓ 3-14			
SB 348	"	✓ "				✓ 3-14					
" 372	"	✓ 3/16						✓ 3-20			
" 405	"	✓ 3/21		Tabled on 3-22-89							
" 420	"	✓ 3/14		✓ Tabled 3-14							
" 421	"	✓ "						✓ 3-14			
" 428	2/28	✓ 3/16				3-16				✓ 3/20/89	
" 429	2/22	✓ 3/16								✓ 3/20/89	
" 430	2/28	✓ 3/21		Tabled on 3/21/89							
" 444	2/28	✓ 3/21						✓ 3-22			
SB270	4/3/89	✓ 4/4/89						✓ 4/4/89			
HJR44	4/10/89	✓ 4/11/89		✓ 4/11/89							
HJR50	4/19/89	4/19/89				4/19/89					

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Chairman Russell, on March 16, 1989, at 3:00 p.m.

ROLL CALL

Members Present: Fifteen.

Members Excused: Rep. Bill Glaser.

Members Absent: None.

Staff Present: Eddye McClure, Staff Attorney

Announcements/Discussion: Chairman Russell announced the order in which the bills will be heard.

HEARING ON SB 255

Presentation and Opening Statement by Sponsor:

SEN. AKLESTAD: (Sen. Aklestad read the introduction of the bill and then started to talk about the highway patrol not having authorization to keep highways open in case of striking workers blocking the highway) ... the highway patrol is not allowed to keep the highways open to the citizens of Montana and let them travel from point A to point B as they desire. I would like to emphasize in only this one case they are not allowed to keep the highways open in the state of Montana.

All other cases, the highway patrol works in conjunction with other law enforcement agencies across the state. Under SB 255, before they would be able to come and intervene, they would still have to get authorization from the Attorney General. If we wanted the bill to be fair to the citizens of this state, they shouldn't have to get authorization from the Attorney General to keep the highways open. This is one exception. This is preferential treatment still in the bill that they would have to get authorization.

I would like to emphasize that under this bill the highway patrol would still be prohibited from intervening or doing anything pertaining to a strike that was at a plant site or on a road just leading in. I think the citizens of Montana feel that law enforcement agencies "will protect you and stop violence in all cases." In this bill, unfortunately, they still will not be able to stop violence and to help other law enforcement agencies. This bill only gives them the authority to keep the highways open in the state.

work more than eight hours and they have been doing this.

I don't know if you people have looked up the state law we are dealing with here, but that state law states very implicitly, with no exceptions, that if you work longer than and 8-hour day you are breaking the law. There is that exception that says "in case of emergency."

Jan Brown will carry this bill in the House should it pass this committee.

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HEARING ON SB 428

Presentation and Opening Statement by Sponsor:

SEN. THAYER: This bill has been worked on since 1985. SB 428 sets up the state compensation insurance fund as a mutual insurer of workers' compensation injuries.

The Governor's Advisory Council of 1985 to 1987 established the foundation of the 1987 reform. This ended up being SB 315 in the last session. The council considered a proposal to remove the state fund from the administrative control of the division of workers' compensation. At that time the council members could not come to a consensus on the separation issue and the department did not support the idea because they felt the conflict was more perceived than real. In the interim it has become more apparent that as the deficit has continued to grow, bold steps must be taken to establish an entity which will guarantee continuous well managed coverage through a mechanism that is established along the lines of a private insurance company.

Montana is probably the only state where both the workers' compensation regulatory function and the state fund are responsible to the same authority. Most states separate this authority to avoid the apparent conflict of interest. Having had additional time to evaluate the impact of this proposal, I am requesting that you also consider these additional amendments. (Attached hereto as Exhibit #13). One of the changes is the wording throughout the codes, taking out "division" and replacing it with "department." (Here he read from written testimony explaining the amendments, attached hereto as Exhibit #14).

It was quite apparent after getting additional input that an effective date of October 1, 1989 was not realistic and rather than put something in statute that you know isn't going to be accomplished, why not make the date more realistic. One of the amendments changes that implementation date.

The same thing was true of the assigned risk pool. If the assigned risk pool is needed, they have more time to study and get ready to implement it.

With these amendments, I think we have a really good bill.

Testifying Proponents and Who They Represent:

MIKE MICONE, Commissioner of the Department of Labor and Industry.

BILL PALMER, Interim Administrator at the Division of Workers' Compensation.

TOM HARRISON, Representing the Montana Workers' Compensation Council.

TOM SCHNEIDER, Montana Public Employees' Association.

JIM MURRY, Executive Secretary of the Montana State AFL-CIO.

GEORGE WOOD, Executive Secretary of the Montana Self Insurers Association.

JAMES TUTWILER, Montana Chamber of Commerce.

DON ALLEN, Executive Director of the Montana Wood Products Association.

LAURIE SHADOAN, Bozeman Chamber of Commerce.

BONNIE TIPPY, Alliance of American Insurers, also on behalf of Jacqueline Terrell who represents the American Insurance Association.

CHARLES BROOKS, Executive Vice President of the Montana Retail Association. Representing also the Montana Hardware Implement Dealers, the Montana Tire Dealers and the Montana Office Equipment Dealers.

Proponent Testimony:

MIKE MICONE, proponent. We are supporting SB 428. (Read from written testimony, attached hereto as Exhibit #15).

BILL PALMER, proponent. (Read from written testimony, attached hereto as Exhibit #16).

TOM HARRISON, proponent. I would like to explaint what the Montana Workers' Compensation Council is made up of and how they became involved in this particular effort. The group is an ad hoc group formed well over a year ago. I think it has fair representation from virtually all aspects and groups that are involved in workers' compensation. By that I include vocational rehabilitation people, the self

insurers, the private companies, the independent insurance agents, the plaintiffs' bar, the defense bar, and I am sure others. My function is that of a liaison for you, the legislature. The basic goal and concern of those council members was the conflict of interest which has been testified to.

I think omitting the conflict of interest, setting up administration of everyone who is in workers' comp and the workers' comp fund itself, will be a great step forward to the state of Montana.

TOM SCHNEIDER, proponent. I want to offer an amendment. We represent the current employees of the plan. The amendment provides them with some type of guarantee that their employment rights will be retained if the fund is moved and that will make them feel a lot better. (He submitted a copy of the proposed amendment, attached hereto as Exhibit #17).

JIM MURRY, proponent. We go on record in support of SB 428 with the amendment proposed by Mr. Schneider to protect the present employees.

GEORGE WOOD, proponent. We want to go on record in support of this legislation and we request that you report this bill do pass.

I have been asked by BEN HAVDAHL of the Montana Motor Carriers Association to indicate to you their support. He was called away and couldn't attend this meeting.

JAMES TUTWILER, proponent. We are very certain of the fact that businesses, in general, throughout the state consider workers' compensation as a major concern to them. Whether the problem lies in the supreme court decisions or district court decisions, or management, or alleged conflicts of interest, or the law as it presently exists, regardless of that, there is a real perception among many businesses in Montana that something is amiss with our management and this bill which promises a new approach offers hope and is warmly and completely supported by the business community.

We were concerned initially that the assigned risk pool could potentially pose a problem for small employers who constitute the majority of the employers in Montana and who are the employers who constitute the biggest share of the clients in the state compensation insurance fund.

If it develops that the assigned risk pool is elected as an option, we ask great care be exercised to insure that the many small employers in this state aren't victimized by an unreal and unaffordable higher workers' compensation insurance rate.

The Montana Chamber stands in strong support of this bill and we urge your adoption.

DON ALLEN, proponent. We rise in support of the bill with the amendments. We think particularly the deletion of section 12 makes it a better piece of legislation.

LAURIE SHADOAN, proponent. The largest single issue of employers is the workers' compensation problem. We support this bill.

The Missoula Chamber of Commerce would also like to go on record in support of SB 428.

BONNIE TIPPY, proponent. Both of these groups are trade associations of insurance companies. The alliance was basically founded with workers' compensation private companies. We support this legislation. We urge your do pass with the amendments.

CHARLES BROOKS, proponent. We support SB 428. We particularly support the concept of variable pricing levels within the individual rate classifications in order to reward an employer with a good safety record and penalize an employer with a poor safety record. Since we represent a large number of small businesses we continue to be concerned that those businesses have access to coverage at a competitive rate. It appears that the proposed legislation will assure that coverage for the many small businesses within our state will continue to be available at reasonable prices. We urge you to support SB 428.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

None.

Closing by Sponsor:

SEN. THAYER: I think everything has been said that needs to be said about this bill. I want to touch on a couple points. One of the things this is going to do is require the new board to set the rates on an actuarial sound basis. That is an important part of this bill and there is going to be a great emphasis put on safety. This bill includes a flexible rating provision where you can give a break to the company that implements a good safety program and has a good safety

record and you can penalize those employers who refuse to do that. The assigned risk pool may never be needed if this provision works. I urge the committee to adopt the amendments I offered.

It is certainly not the intention of this bill to have any wholesale firing of people, it is merely to set it up like a private company, run it like a private company, and give the new management team the flexibility to move some people around and do what they think has to be done in order to achieve a better system in the future.

Rep. Thomas will carry this bill on the House floor should it pass this committee.

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HEARING ON SB 429

Presentation and Opening Statement by Sponsor:

SEN. THAYER: This bill was put together as a committee bill in Business and Industry prompted by a situation that occurred in Great Falls. I am reluctant to tell you, but it did happen in my own company up there. We had an employee who was embezzling funds from the company and came in and confessed. The arrest was made and the county attorney is prosecuting the case.

It turns out that there is a quirk in the state law that requires that even though somebody has stolen funds from a person or company, you do not have the right to withhold the last check or any money that might be due them for unused vacation time or that sort of thing. The person would be paid if he/she was acquitted or found not guilty of taking the funds. If they are found guilty, then that money can be kept as part of the restitution. The company would be going after whatever assets the person had anyway so this would be part of it.

That's all the bill does.

Testifying Proponents and Who They Represent:

CHARLES BROOKS, Montana Retail Association.

JIM MURRY, Executive Secretary of the Montana State AFL-CIO.

Proponent Testimony:

CHARLES BROOKS, proponent. We support SB 429. The retail industry with the large amount of cash and merchandise handled on a daily basis has above average exposure to theft of cash and merchandise by their employees, although we have many programs in force to prevent that from happening,

DAILY ROLL CALL

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-16-89

NAME	PRESENT	ABSENT	EXCUSED
Rep. Angela Russell, Chairman	✓		
Rep. Lloyd "Mac" McCormick,VC	✓		
Rep. Vicki Cocchiarella	✓		
Rep. Duane Compton	✓		
Rep. Jerry Driscoll	✓		
Rep. Bob Pavlovich	✓		
Rep. Bill Glaser			✓
Rep. Tom Kilpatrick	✓		
Rep. Thomas Lee	✓		
Rep. Mark O'Keefe	✓		
Rep. Jim Rice	✓		
Rep. Richard Simpkins	✓		
Rep. Clyde Smith	✓		
Rep. Carolyn Squires	✓		
Rep. Fred Thomas	✓		
Rep. Timothy Whalen	✓		

EXHIBIT 19
DATE 3-16-89
HB SB428

pg 1 of 6

OFFICE OF THE GOVERNOR
BUDGET AND PROGRAM PLANNING

STAN STEPHENS, GOVERNOR

STATE CAPITOL

STATE OF MONTANA

(406) 444-3616

HELENA, MONTANA 59620

MEMORANDUM

TO: Senator Gene Thayer

FROM: Dave Lewis, Director
Office of Budget and Program Planning

RE: Fiscal Impact of amendments to SB428, third reading.

DATE: March 16, 1989

The amendments to SB428 will remove from section 12 consideration of the Premium Tax on Private Carriers, $2,170,000 in FY90 and $2,388,000 in FY91. This Premium Tax will remain in the State Auditor's Office and be reverted to the General Fund.

Assuming that the Assigned Risk Plan in Section 13 will be implemented January 1, 1990, the Premium Tax on the State Fund will be imposed. The Premium Tax on the State Fund will generate approximately $2,987,000 in FY90 and $3,435,000 in FY91, which will be reverted to the General Fund. This is contingent upon implementing the Assigned Risk Plan. Operating costs for the State Fund and the State Auditor's Office will remain unchanged. The revenue reflected in the fiscal note for SB428 will be reduced by the Premium Tax on Private Carriers of $2,170,000 in FY90 and the $2,388,000 in FY91.

The net impact of the amendments to the fiscal note will be to reduce the contribution to the unfunded liability by $5,131,244 in FY90 and $5,770,074 in FY91, and revert the Premium Tax on the State Fund collected to the General Fund by $2,987,000 in FY90 and $3,435,000 in FY91.

EXHIBIT 13
DATE 3-16-89
HB SB 428

2046

Amendments to Senate Bill No. 428
Third Reading Copy
Requested by Sen. Gene Thayer
Prepared by Mary McCue
March 16, 1989

1. Title, line 16.
Following: "2-18-103,"
Insert: "19-3-1002, 19-3-1007, 19-3-1202, 19-13-601, 33-1-102,"
Following: "33-2-119,"
Insert: "33-16-1005, 33-16-1011,"

2. Title, line 17.
Following: "37-72-101,"
Insert: "39-1-103,"
Following: "39-71-206,"
Insert: "39-71-207,"

3. Page 2, line 24 through page 3, line 1.
Strike: line 24 through "is." on page 3, line 1

4. Page 3, line 1.
Strike: "not"

5. Page 3, line 3.
Strike: ", except for"
Insert: "and shall insure"

6. Page 3, lines 24 and 25.
Following: "corporation." on line 24
Strike: remainder of line 24 through "not" on line 25
Insert: "The state fund is"

7. Page 4, line 1.
Following: "may"
Insert: "not"

8. Page 4, line 2.
Strike: ", except a state agency"
Insert: "unless an assigned risk plan is established under [section 12] and is in effect"

9. Page 4, line 14.
Strike: "12"
Insert: "11"

10. Page 6, line 24.
Strike: "12"
Insert: "11"

11. Page 7, line 2.
Strike: "12"
Insert: "11"

12. Page 9, line 18.
Following: "fund."
Insert: "The state fund is not a member insurer for the purposes of the insurance guaranty association established pursuant to Title 33, chapter 10, part 1."

13. Page 9, lines 22 and 23.
Strike: "12" on line 22
Insert: "11"
Strike: "and" on line 22 through "12]" on line 23

14. Page 9, line 24.
Following: "(3)"
Strike: "The"
Insert: "If an assigned risk plan is established and administered pursuant to [section 12], the"

15. Page 10, line 10 through page 11, line 5.
Strike: section 12 in its entirety
Renumber: subsequent sections

16. Page 11, lines 6 and 7.
Strike: "The commissioner of insurance shall promulgate"
Insert: "Following the date on which the provisions of [this act] are implemented but no later than December 31, 1990, the commissioner of the department of labor and industry may order the establishment of"

17. Page 11, line 11.
Following: "methods."
Insert: "In determining whether to order an assigned risk plan to be established, the commissioner shall consider the effect a plan would have on the availability of workers' compensation insurance and the need to provide competitive workers' compensation premium rates for employers in this state. If the commissioner orders the establishment of an assigned risk plan, it may not take effect until at least 6 months following the commissioner's order creating the plan."

18. Page 11.
Following: line 18
Insert: "(4) If an assigned risk plan is established and in effect, the state fund, plan No. 3, is not required to insure any employer in this state requesting coverage, and it may refuse coverage for an employer, except for a state agency.

(5) If an assigned risk plan is established and in effect, an employer who is refused the coverage required by this chapter by the state fund, plan No. 3, and by at least two private insurers, plan No. 2, may be assigned coverage by the commissioner under the assigned risk plan pursuant to the procedure established by the commissioner for the equitable apportionment of coverage."

19. Page 12, line 3.

Page 14, lines 1, 2, 9, and 12.
Page 16, lines 8, 10, and 13.
Page 17, lines 15, 20, and 23.
Page 18, lines 2, 3, and 9.
Page 19, lines 8, 9, 11, and 12.
Page 20, lines 3, 14, 15, 20 (two places), and 23.
Page 21, lines 5, 6 (two places), 11, and 14.
Page 23, line 24.
Page 24, lines 4, 10, and 14.
Page 25, lines 5, 14, and 23 (two places).
Page 26, lines 5 and 9.
Page 27, line 4.
Page 28, lines 1 and 5.
Page 30, line 3.
Page 34, line 10.
Page 35, line 4.
Page 42, lines 3, 5, 6, and 14.
Page 46, line 23.
Page 47, lines 17 and 23.
Strike: "division", "division", "division", and "DIVISION"
Insert: "department"

20. Page 13, lines 10 through 12.
Strike: subsection (7) in its entirety
Renumber: subsequent subsections

21. Page 30, lines 16 and 17.
Following: "due" on line 16
Strike: remainder of line 16 through "EXPOSURE" on line 17

22. Page 36, line 21.
Strike: "employees"
Insert: "management and upper level supervisory positions"

23. Page 37, line 22.
Following: "capacity;"
Insert: "or"

24. Page 38, line 4.
Strike: "; or"

25. Page 38, lines 5 through 8.
Strike: "(c)" on line 5 through "33-18-212" on line 8

26. Page 39, lines 11 through 16.
Strike: lines 11 through 16 in their entirety

27. Page 43, line 14.
Strike: "13"
Insert: "12"

28. Page 45, line 8.
Strike: "workers' compensation division"
Insert: "department"

29. Page 45, lines 21 through 23.
Following: "(c)" on line 21
Strike: remainder of line 21 through line 23
Insert: ""department" means the department of labor and industry;"

30. Page 46, line 25 through page 47, line 2.
Following: "(3)" on line 25
Strike: remainder of line 25 through page 47, line 2
Insert: ""Department" means the department of labor and industry."

31. Page 47, lines 14 through 16.
Following: "(1)" on line 14
Strike: remainder of line 14 through "industry" on line 16
Following: "~~2-15-1702~~"
Insert: ""Department" means the department of labor and industry"

32. Page 48.
Following: line 23
Insert: "**Section 50.** Section 39-1-103, MCA, is amended to read:

"**39-1-103. Powers of department.** (1) In discharging the duties imposed upon the department, the commissioner or his authorized representatives may administer oaths, examine witnesses under oath, take depositions or cause same to be taken, deputize any citizen 18 years of age or older to serve subpoenas upon witnesses, and issue subpoenas for the attendance of witnesses before him in the same manner as for attendance before district courts.

(2) The commissioner may likewise cause to be inspected any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment.

~~(3) Nothing herein contained shall in any manner confer upon the commissioner the authority to interfere in any manner with the conduct of the matters under the control of the workers' compensation division, nor shall the commissioner be charged with the duty of enforcing any of the laws of the state pertaining to the affairs of the workers' compensation division or with the enforcement of the safety provisions of the Workers' Compensation Act.~~

~~(4)~~(3) Nothing in this chapter applies to labor violations preempted by federal law or regulation."

Section 51. Section 39-71-207, MCA, is amended to read:

"**39-71-207. Merit system.** Employees of the ~~division, except the administrator,~~ department are included within the joint merit system if such inclusion is required for the receipt of federal funds by 29 CFR 1902.3(h) or by any other federal law or regulation."

Section 52. Section 33-1-102, MCA, is amended to read:

"**33-1-102. Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs.** (1) No person shall transact a

business of insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code. 4 of 6

(2) No provision of this code shall apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of such corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of such organizations are authorized by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, ~~parts~~ part 21 ~~and 23~~, and related sections.

(6) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(7) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(8) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state whereby the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state whereby the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."

Section 53. Section 33-16-1005, MCA, is amended to read:

"33-16-1005. Membership in rating organization required -- exception -- filings with commissioner. (1) Every insurer, ~~except the division of workers' compensation~~ including the state compensation mutual insurance fund, writing workers' compensation insurance in this state shall be a member of a workers' compensation rating organization. No insurer may, at the same time, belong to more than one rating organization with respect to such insurance.

(2) A rating organization shall file with the insurance commissioner every manual of classifications and rules and every rating plan and advisory manual rates, including every modification of the foregoing. Every such filing shall state the effective date thereof. Any insurer writing pursuant to compensation plan No. 2 shall adhere to the manual rules and classifications and rating plans of the rating organization of which it is a member and may adopt by reference, in whole or in part, the advisory manual rates filed under this section. Nothing

in this section, however, requires adherence by any insurer to any rates established or published by any rating organization."

Section 54. Section 33-16-1011, MCA, is amended to read:

"**33-16-1011. Classification and rating committee -- membership -- term.** (1) There is a classification and rating committee.

(2) The committee is composed of five voting members, consisting of:

(a) three representatives of private insurance carriers writing workers' compensation insurance in Montana. The members must reside in Montana and shall be appointed by the Montana commissioner of insurance.

(b) one licensed independent insurance agent who resides in Montana, appointed by the Montana commissioner of insurance; and

(c) one representative of the ~~division of workers' compensation~~ state compensation mutual insurance fund who is an employee of the ~~division~~ state fund and who ~~shall be~~ is appointed by the ~~administrator of the division~~ executive director of the state fund.

(3) Each member shall hold office for a period of 3 years. Any appointee who fills the vacancy of a member whose term has not expired shall fill only the remaining term and may be reappointed for a full term.

(4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a) and (2)(b) above, established private organizations representing insurance carriers and independent insurance agents may submit names of individuals they recommend for appointments. The commissioner of insurance shall give consideration to such names submitted before appointments are made. However, the commissioner of insurance is not required to appoint any person from the names submitted.

(5) The committee shall be funded from the operations budget of the rating organization. Committee members may, if they request, be paid their actual and necessary travel expenses."

Section 55. Section 19-3-1007, MCA, is amended to read:

"**19-3-1007. Allowance for duty-related disability.** (1) The annual amount of retirement allowance payable to a member eligible for disability retirement for duty-related reasons and granted prior to July 1, 1977, is 50% of his final compensation. However, the annual amount of retirement allowance is 25% of final compensation for any period during which the member has been awarded ~~compensation by the~~ workers' compensation ~~division~~, whether such compensation is received in periodic payments or in a lump sum. The annual amount of retirement allowance reverts to 50% of final compensation at the end of such period.

(2) Any retired member receiving a retirement allowance on July 1, 1977, who has previously been granted a duty-related disability under provisions in effect on June 30, 1977, will be subject to the provisions of this section after July 1, 1977."

Section 56. Section 19-3-1002, MCA, is amended to read:

"**19-3-1002. Eligibility for disability retirement.** (1) Except as provided in subsection (2) and 19-3-1004, a member who

is not eligible for service or early retirement but has completed 5 years of creditable service and has become disabled while in active service, as defined in 19-3-1001, is eligible for disability retirement.

(2) A member age 60 or older who has completed 5 years of creditable service and has had a duty-related accident forcing him to terminate his employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-related accident may conditionally waive his eligibility for a service retirement to be eligible for disability retirement. The waiver is effective only upon approval by the board of his application for disability retirement. The board shall determine whether a member has become disabled under the provisions of 19-3-1003. The board may request any information on file with the ~~workers' compensation division~~ state compensation mutual insurance fund concerning the duty-related accident. If no information is available, the board may request and the ~~division~~ state fund shall provide an investigative report on the disabling accident."

Section 57 Section 19-3-1202, MCA, is amended to read:

"19-3-1202. Amount of death benefit. The amount of death benefit is the sum of (1), (2), and (3) as follows:

(1) the member's accumulated contributions;

(2) an amount equal to one-twelfth of the compensation received by the member during the last 12 months of such compensation multiplied by the smaller of six or the number of years of his creditable service; provided, however, that this portion of the death benefit is not payable if the board receives a certification from the ~~workers' compensation division of the state of Montana~~ state compensation mutual insurance fund that it is paying compensation because the member's death resulted from injury or disease arising out of or in the course of employment; and

(3) the accumulated interest on the amounts in subsections (1) and (2) of this section to the first day of the month in which the benefit is paid."

Section 58. Section 19-13-601, MCA, is amended to read:

"19-13-601. Deduction remitted to firemen's association -- member's contributions. (1) Each employer shall retain from the monthly compensation of each active member a sum equal to 1% of his monthly compensation for his services as a firefighter and shall remit this amount on a monthly basis to the Montana state firemen's association for the payment of premiums on a group life and accidental death and dismemberment insurance policy for members and to defray expenses incurred by the association when representing members of the plan.

(2) The member's contribution to the retirement system for each active member is 6% of his monthly compensation.

(3) If a member receives compensation under the provisions of the Workers' Compensation Act, Title 39, chapter 71, the amount received must be included as part of his monthly compensation for purposes of determining contributions and service credits under the retirement system. Contributions made

under this section, 19-13-604, and 19-13-605 must be based on the total compensation received by the member from his employer and from ~~the~~ workers' compensation ~~division~~ during the period of disability.

(4) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, as amended and applicable on July 1, 1987, shall pick up and pay the contributions which would be payable by the member under subsection (2) for service rendered after June 30, 1987.

(5) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(6) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's monthly compensation as defined in 19-13-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.""

Renumber: subsequent sections

33. Page 49, line 7.
Strike: "and"
Following: "through"
Strike: "12"
Insert: "11, 44, and 45"

34. Page 49, line 10.
Strike: "and"
Following: "through"
Strike: "12"
Insert: "11, 44, and 45"

35. Page 49, line 15.
Strike: "13"
Insert: "12"

36. Page 49, line 17.
Strike: "13"
Insert: "12"

37. Page 50.
Following: line 7
Insert: "NEW SECTION. **Section 64. Name change -- code commissioner instruction.** (1) In the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division", meaning the division of workers' compensation, are changed to "department of labor and industry" or "department", meaning the "department of labor and industry".

(2) The code commissioner shall designate, in a manner consistent with [this act], workers' compensation insurance regulatory functions allocated to the division of workers' compensation by the 51st legislature to the department of labor and industry that are not so designated by [this act]."

(3) Wherever it appears in 39-71-205, 39-71-222 through 39-71-224, 39-71-613, 39-71-902, 39-71-904, 39-71-910 or in law enacted by the 51st legislature, the code commissioner is directed to change the term "administrator" or "his" to "department", meaning the department of labor and industry."
Renumber: subsequent section

38. Page 50, line 9.
Following: "~~50~~"
Strike: "54, 55"
Insert: "39, 60 through 64"

39. Page 50, line 11.
Strike: "and"
Following: "through"
Insert: "38, and 40 through"
Strike: "53"
Insert: "59"

40. Page 50, line 13.
Strike: "55"
Insert: "63"
Strike: "October 1, 1989"
Insert: "January 1, 1990"

EXHIBIT 14
DATE 3-16-89
HB SB428

SPONSOR TESTIMONY
SB 428
Senator Thayer

Mr. Chairman, members of the committee. SB 428 sets up the State Compensation Insurance Fund as a mutual insurer of workers' compensation injuries.

The Governor's Advisory Council of 1985-87, which established the foundation of the '87 Reform, considered a proposal to remove the State Fund from the administrative control of the Division of Workers' Compensation. At that time, the council members could not come to a consensus on the separation issue, and the Department did not support the idea because they felt the conflict was more perceived than real. However, it now becomes more apparent that as the deficit continues to grow, bold steps must be taken to establish an entity which will guarantee continuous, well-managed coverage through a mechanism that is established along the lines of a private insurance company.

Montana is probably the only state where both the workers' compensation regulatory function and the State Fund are responsible to the same authority. Most states separate this authority to avoid the apparent conflict of interest.

Having had additional time to evaluate the impact of this proposal, I am requesting that you also consider these additional amendments:

1. Rather than implement the assigned risk plan with the effective date of the bill, the amendments provide the commissioner of the Department of Labor and Industry with the authority to evaluate the need and put the plan in place if he feels it necessary. There are several sections in the bill

EXHIBIT 14
DATE 3-16-89
SB 428

that need to be amended to accommodate this provision. Should the plan be implemented, new language now specifies its operating principles. Also, if the plan is implemented, the State Fund would be required to pay the premium tax which is deposited to the general fund.

2. Section 12 is deleted in its entirely. This section had provided that premium tax paid by private carriers be transferred to the State Fund to assist with the unfunded liability rather than be deposited into the general fund. It had also required the State Fund to pay the same premium tax as private carriers.

3. References to the Division of Workers' Compensation are changed to the Department of Labor and Industry.

4. Exempts only upper level supervisory personnel from the state pay plan rather than all personnel.

5. Makes the act effective on January 1, 1990, or upon the issuance of an executive order which ever occurs first rather than October 1, 1989, or issuance of an executive order. This simply gives the Department of Labor and Industry a little more time to put the program in place.

As a step toward improved fiscal management and better service to all parties involved, the current administration is asking your favorable consideration of this bill.

I would like Mr. Palmer, the Division Interim Administrator, to discuss some of the bill's provisions.

EXHIBIT 13
DATE 3-16-89
HB SB 428
1 of 2

DEPARTMENT OF LABOR AND INDUSTRY

COMMISSIONER'S OFFICE

STAN STEPHENS, GOVERNOR

P.O.BOX 1728

STATE OF MONTANA

(406) 444-3555

HELENA, MONTANA 59624

March 16, 1989

TESTIMONY BEFORE THE HOUSE LABOR COMMITTEE ON SENATE BILL 428

BY MIKE MICONE, COMMISSIONER OF LABOR AND INDUSTRY

Madam Chairman and members of the Committee, my name is Mike Micone, Commissioner of Labor and Industry. I'm here to support Senate Bill 428 to separate the workers' compensation state fund from the Workers' Compensation Division.

Senate Bill 428 calls for a general reorganization of the Workers' Compensation Division. It would move the state insurance fund to the Department of Administration, while maintaining the regulatory functions in a separate division of the Department of Labor and Industry.

The state fund, as a workers' compensation insurer, would become a mutual insurer with its administration function attached to the Department of Administration. It would be managed by a board appointed by the governor. The board would pick an executive director to manage the day-to-day functions of the fund. The executive director and certain other management employees would be exempt from the state pay plan, with the management staff serving at the pleasure of the executive director.

The board would have the authority to contract out to private industry certain claims-servicing functions of the state compensation insurance fund.

The board would be bound by law to set the fund's insurance rates on an actuarially sound basis.

This is not a new idea; it was discussed during the last session, but not adopted as part of the Workers' Compensation reform legislation.

The 1987 Legislature did make considerable changes in the workers' compensation law. This bill, like many others being heard this session, continues the reform started two years ago.

"AN EQUAL OPPORTUNITY EMPLOYER"

2082

EXHIBIT 15
DATE 3-16-89
HB SB348

The workers' compensation system has been subject to criticism from all quarters. Some say the law is the problem, some say the courts are the problem and some maintain that poor management of the system is the problem.

This bill won't solve all the problems, but it will address what many see as an inherent problem with having the same state agency acting as an insurer as well as regulating the system.

We feel the workers' compensation should be operated more like a privately-run insurance company, and should have its insuring functions separated from its regulatory functions. It's a further refinement of the reform started two years ago.

I ask that you support Senate Bill 428.

EXHIBIT 16
DATE 3-16-89
HB SB428
pg 1 of 3

DEPARTMENT TESTIMONY

SB 428
State Mutual Insurance Fund

A. Purpose:

1.) To remove any conflict of interest that may currently exist between the State Compensation Insurance Fund and the workers' compensation regulatory authority of the Division.

2.) To establish an organizational structure which will ensure the solvency of the newly created state mutual insurer.

B. Rationale:

1.) The administration recognizes that sound management requires an organization to be financially solvent. Even though the current State Compensation Insurance Fund is a state agency and is supported by the strength of Montana state government, it is necessary for the organization to generate sufficient revenues to cover expected liabilities. Failure to do so puts an unreasonable burden on injured workers who are entitled to the statutory benefits and creates a false sense of financial security for employers who expect premiums to cover costs.

2.) The administration is convinced that the proposed structure will continue to provide employers with an alternative to obtaining the required coverage in a competitive market. Employers should continue

EXHIBIT 16
DATE 3-16-89
HB SB # 428

to have a choice. Not only price but service and dependability are important factors in making a decision of who will become a firm's insurer.

C. Overview:

1.) Establishes a five-member board of directors who are vested with the management and control of the Fund..

2.) Establishes the Fund as a mutual nonprofit independent insurer.

3.) Allows the Board to appoint an executive director who has the responsibility for the Fund's operating management.

4.) Allows the Board to set personnel salaries of those employees who are exempted from the pay plan.

5.) Essentially operates in the same manner as a private carrier and requires the State Fund to conform with the insurance commissioner's rules and regulations governing workers' compensation carriers.

6.) Property of the Fund, including all monies, property, securities, etc., belong to the Fund and not the state.

7.) Allows the Commissioner of the Department of Labor and Industry, should he deem it necessary, to establish an assigned risk pool so that those employers with poor experience may obtain coverage

EXHIBIT 16
DATE 3-16-89
HB SB 428

either from a private carrier or the State Fund. The assigned risk plan will provide for an equitable assignment of poor risk employers among both private carriers and the State Fund.

8.) Requires the State Fund to provide coverage for all employers unless the assigned risk plan is implemented.

9.) Continues the Fund as the exclusive carrier for state agencies.

10.) Allows for the payment of dividends once the unfunded liability is wiped out.

11.) Maintains the current payroll classification system established by the National Rating Organization.

12.) Allows the Governor to implement the provisions of the reorganization by executive order but no later than January 1, 1990.

CONCLUSION:

Although the concept may be new to Montana, many other states, (eg., Arizona, Oregon, Minnesota, Idaho) follow this organizational format.

We ask your favorable support to the bill, the amendments offered by Senator Thayer, and the amendment which will be offered by Mr. Tom Schneider of MPEA.

William R. Palmer
Interim Administrator
March 16, 1989

EXHIBIT 17
DATE 3-16-89
HB SB 428

HB428

Page 49, Section 54, Line 23

After ". . . Fund."

Insert

It is intended that current employees of the division of workers' compensation whose functions are transferred to the state compensation mutual insurance fund shall retain employment rights consistent with their position at the time of the transfer.

VISITORS' REGISTER

House Labor COMMITTEE

BILL NO. SB428 DATE 3-16-89

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Gary Wood	Mt Self Insurers Assn	X	
Ben Havdahl	MT. Motor Carriers Assn	X	
Tom Schneider	MPEA	Amend	
Charles Brooks	MT. Retail Assoc	X	
Don Allen	MT Wood Products Assn	X	
Riley Johnson	NFIB	X	
John Delano	WETA	X	
Rob Marquis	Missoula Chamber	X	
Peter Nielsen	Dept of Labor Industry	X	
Jacqueline Terrell	Amer. Ins. Assoc.	X w/amdts	
John Crosfield	Lawyer-Helena	X with Am.	
Jim Murry	Mont. AFL-CIO	X " "	
Tom Hannon	Mont's Workers Comp Council	X	
Jon Tutwiler	MT Chiefs Co. Ass.	✓	
Laura Shaban	Bozeman Chamber	X w/am	
Bonnie Tippey	Alliance of Am Insurers	✓	
Roger McGlenn	IIAM	X As Amended	
Mike Sherwood	MTLA	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON HOUSE LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Chairman Russell, on March 20, 1989, at 11:06 A.M.

ROLL CALL

Members Present: Twelve.

Members Excused: Fred Thomas, Duane Compton, Bob Pavlovich, and Bill Glaser.

Members Absent: None.

Staff Present: Eddye McClure, Staff Attorney.

Announcements/Discussion: We have five bills to take executive action on this morning.

DISPOSITION OF SB 429

Motion:

RICE: Moves a DO CONCUR IN SB 429.

Discussion:

None.

Amendments, Discussion, and Votes:

DRISCOLL: I would like an amendment to the bill that if the person is not found guilty then they would receive penalty and interest on their money while they waited for it. In this country, it used to be that people were innocent until proven guilty. I don't agree that people should be stealing from employers; but if this person is found innocent then they should get some penalty and interest while they are waiting for their money. If you don't pay your taxes on time you have to pay penalty and interest. If you don't pay the banker for your house payment, he charges you penalty and interest. The employee if he is innocent should receive penalty and interest, in my opinion.

WHALEN: Is that an amendment?

RUSSELL: He has moved the amendment. Is there any discussion? Rep. Driscoll, will you please repeat that amendment for Eddye?

DRISCOLL: Right now the bill says if you are charged, then the employer keeps your wages. If you are found guilty, then they can take an offset. It doesn't say anything about if you are found innocent. I would like an amendment that says if an employee is not found guilty of the offense then the employer has to pay the employee the same penalty and interest that a person would have to pay the government if he does not pay his taxes on time. I think it is 2% and then 5/16ths or 5/12ths per month or something like that.

McCLURE: Rep. Driscoll, is that like wages, plus any interest accrued, or is it different?

DRISCOLL: If it took six months for the court case to be settled, then the person would get six months' interest on the amount of money that he was waiting to get.

SIMPKINS: Say that the person was not found guilty, either the employer decided to drop the charges or you went to court and were found innocent, then you would receive interest on the unpaid wages?

WHALEN: What day would that amount come from -- from the day the wages were due or the day the wage claim was made, or what would be used?

DRISCOLL: The day the wages were due.

Vote on Amendment:

Unanimous vote in favor of the amendment.

Vote on SB 429 to DO CONCUR AS AMENDED:

Unanimous vote to DO CONCUR AS AMENDED.

Rep. Simpkins will carry the bill on the House floor.

- - - - - - - -

DISPOSITION OF SB 428

Motion:

DRISCOLL: Moved a DO PASS on SB 428.

Discussion:

Amendments, Discussion, and Votes:

DRISCOLL: On the Gray Bill, the amendments that were offered, I don't know which one it was but there was one amendment that exempted only the management. Gray Bill attached as Exhibit #1.

I move the amendments with the exception of amendment #22.

My reason for doing that is in the system (a lot of background noise and Rep. Driscoll could not be heard here)

... and pay whatever they can get the employees for, whatever they can negotiate for. The claims checkers for the state fund are way under paid from what USF&G pays.

I would hope the committee would allow the new managers to start paying these people (could not understand because of noise) ... and leave amendment #22 out of the bill, this does have some possibilities.

(About three minutes of everybody talking at once just between themselves and could not understand any of it)

DRISCOLL: (In answer to a question from Simpkins). It is agreed upon by the Commissioner of Labor, Jordon Lynch -- the only one who is against it is Ettinger to my knowledge.

(Real noisy here and I couldn't get all of what he was saying)

... somebody came in proposing an amendment and I asked George Wood, Mike Micone, Jim Murry whether or not they supported it. I told them I couldn't support the bill with that amendment, and they all said they didn't particularly care about that amendment.

(Several minutes here where Driscoll talked some more about why he didn't like the amendment, but he didn't have his microphone on and the background noise was bad so most of it could not be understood)

SMITH: I support Jerry on that amendment because I don't think there is any way this program can work right without taking that out.

DRISCOLL: The grey bill would be restored to the same language that is in the blue bill.

RUSSELL: Eddye (McClure) would you clarify that just in case we might have questions further on.

McCLURE: Back in the yellow bill it exempted not only upper echelon employees, but everyone. That's what Rep. Driscoll wants to go back to. Put the amendment that was in the yellow bill and now in the blue bill back in.

Recommendation and Vote:

RUSSELL: So we are adopting all of the amendments with the exception of the one on page 21 and going back to the blue bill language.

Vote on Amendments:

Unanimous vote to DO PASS AMENDMENTS.

Continued Discussion:

WHALEN: I wasn't here for the hearing on this, but I note that they are transferring the workers' compensation court under the auspices of the Department of Labor and Industry. I was wondering if anybody who was here could explain to me why that is being done. That makes me nervous, but I didn't hear the testimony, I guess I see a kind of a conflict. The division is under the Department of Labor and Industry and I think the court ought to be separate from the Department of Labor and Industry. Can anybody answer that question why they are transferring it over and creating an apparent conflict?

Did anybody mention anything about that specific part of the bill?

COCCHIARELLA: The only testimony I remember, Tim, that related to a problem with making that move was when Tom Schneider spoke for those people who may lose their jobs. That was the concern and that might address part of what you are worried about too.

DRISCOLL: Under executive reorganization it has to be attached to some place for administrative purposes only.

WHALEN: This is just for administrative purposes?

DRISCOLL: Yes. All of these things have to be attached to some division of the 19 or 20 divisions.

WHALEN: The court hasn't been administratively attached to anything to my knowledge in the past; could Gene Fenderson or Mike Micone address that question.

RUSSELL: Without objection from the committee.

MICONE: As Rep. Driscoll stated, every function must be attached to a department for administrative purposes. Presently it is attached to the Department of Administration. Under the proposal in 428 the workers' compensation or state mutual fund will be attached to the Department of Administration for administrative purposes; therefore, it was the belief that the workers' compensation court should be removed from that department. The first thought was to attach it to the Department of Justice, but because the Department of Justice may have to intervene in opposition to the court it was determined to move it to the Department of Labor and Industry because we will not be involved in any such situations.

WHALEN: What do you mean the Justice Department might have to intervene?

MICONE: There are certain instances where cases that the court has ruled on go before the supreme court and the Department of Justice intervenes as a friend of the court, or defends the state agency in a particular case. Under those circumstances, if it is a decision that is being rendered by the workers' compensation court they didn't feel that they should, in fact, be going against a court that is attached to their department.

WHALEN: Isn't the Department of Labor through the division sometimes a party to proceedings?

MICONE: Presently that is the case and the court is attached to the Department of Administration. The whole idea was to try to keep that all sorted out so a department isn't intervening against itself and the court.

WHALEN: Do you have any objection as to what department it is attached to?

MICONE: Not really. As a matter of fact, we would be happy to offer it to any other department that would want it.

SIMPKINS: Mike, doesn't the court operate more or less independent under different laws and is appointed by the governor?

MICONE: Yes, they do.

SIMPKINS: Even if the court was assigned to the Department of Labor, you have no jurisdiction over that court or you would have no say as to how the court proceeded, or anything like this down the line, would you?

MICONE: That's the way it is presently.

SIMPKINS: So it is an independent court operating under a different set of laws and principles and is not even involved in this bill.

I just bring this up to show Tim that no matter where you put it, it is going to be independently run by a separate set of laws that we in the legislature control.

You are just talking about administrative procedures, that's all, because it is totally independent.

WHALEN: I guess I would move that it be moved over to the Department of Justice. Doesn't the Department of Justice also administer the district courts?

MICONE: I'm sorry, I can't answer that.

Amendment, Discussion and Vote:

WHALEN: I move that SB 428 be amended to have the workers' compensation court administered by the Department of Justice, as opposed to the Department of Labor and Industry, and that way it puts it in conformity with all the other courts in the state.

RUSSELL: Eddye (McClure), we have an amendment here to move the workers' compensation court to the Department of Justice.

SQUIRES: Rep. Whalen, I understand that you are concerned about how it looks to the general public, or whoever. My understanding would be that if you would put it there it would look even worse. There would be a conflict there. The Department of Justice wants to be separate in case they have to be an intervenor or friend of the court. You are putting them under the jurisdiction of the Department of Justice; therefore, you are asking them to go against their own entity. My understanding is that the Department of Labor and the court would be just there for administrative purposes, budget only, and operate as a separate entity. I'm sorry, but I have to oppose your amendment.

WHALEN: Caroline, I would just point out that the Attorney General's office is a part of the Department of Justice and they regularly intervene, in fact they are parties oftentimes in the district court. It bothers me a lot that this thing is going to be in the Department of Labor and Industry, which is where the division is. I think it is more appropriate that it be in the Department of Justice and I don't think that will create any problems.

DRISCOLL: After we separate the division from the fund, then the division will have the responsibilities of helping the injured worker. The compliance with the insurance will stay over there and getting the injured employee his justice will still be with that portion. It is just the guys that run the money part and collect the premiums, they'll be somewhere else. My personal opinion for appearances sake, you should leave it in the Department of Labor. The way it was in the past, with the division and the fund and the court all in the same place, there was always the perception of conflict. Now you are going to have the court over there with the enforcement people and I think that is the place to leave it.

WHALEN: The problem I have, Jerry, is if a matter can't be taken care of before the division, it goes to the workers' comp court. Right now the division has original jurisdiction over all these claims. If it goes to the workers' comp court you are going to have a situation where it is all under the Department of Labor and Industry. You are going from the division to the workers' comp court, which is in

effect now an appellate court. It doesn't have any original jurisdiction any more after two years ago, whereas the division does. You have disputes going from one body, where it couldn't have been decided upon, and going to the workers' comp court. Mike, did you want to respond to that? Am I wrong about that?

MICONE: I think so, because what we must not forget is that we are separating the state fund from the Department of Labor and Industry. They are going to be a completely autonomous body, running their operation as they see fit. Previously, when the division was attached to the Department of Labor and Industry, it made sense for the workers' comp court to be attached to the Department of Administration because it gave the separation of power, so to speak. Now that we have separated the fund and have attached it to the Department of Administration, it is important that we separate the court from the Department of Administration. The Department of Labor and Industry really is not a party any longer to any cases being brought before the workers' comp court.

WHALEN: They are not a party, but they house the division which, if you can't get a dispute resolved before the division, then you go to the court and they are both under the same department, the division and the court, if this bill passes in the form that it is in. I think you are right, they are not a party, but you have got them both under the Department of Labor and Industry and one is a court you have to go to if you don't feel you got relief in the division.

MICONE: Are you speaking of the balance of the division that is going to be transferred to the department or the state fund itself?

WHALEN: I make a distinction between the division and the state fund. The state fund is an insurance company, whereas the division is a department under the Department of Labor and Industry, isn't it?

MICONE: It will be if this bill passes.

WHALEN: I think it is a good idea to separate the state fund from the division. Now we are putting the court and the division together and that concerns me because they both make a determination as to who is going to get paid benefits and who is not going to get paid benefits. If you can't get it resolved before the division, then you go to the workers' comp court, and if you are still in the same department I wonder whether or not the workers' comp court just becomes a rubber stamp for the division.

MICONE: If I can clarify that, the division will not transfer to the department. The functions of compliance will transfer to the department and the department will make a determination just how that will structure into the

department. It is my view that we don't have any intention of creating another division. We looked at putting all of our regulatory functions into one division, which would include the compliance of workers' comp. We will not have a division of workers' compensation within the department.

Very possibly we could create the regulatory function for unemployment compensation, workers' compensation and employment relations and create one regulatory division. They are just going to become another function within the Department of Labor and not a division of workers' compensation.

Most of the cases that are brought against the division today are brought against the state fund for benefits. I'm not aware of any cases that are brought to the workers' compensation court that are on the compliance function, but have always been, to my knowledge, on the benefits portion.

DRISCOLL: As I see this working, right now if you file a claim for benefits and the insurer is USF&G and for some reason you think you are getting a raw deal you go over to the workers' comp division, compliance bureau, and try to get it settled or get a lawyer. When we separate this it will probably be called the Montana State Mutual Insurance Company, Mutual Workers' Comp Insurance Company, or something. You will file your claim against that. If you don't get any action, then you will go over to this division that helps you, which will be the workers' comp bureau, or whatever they are going to call it, and then that court is going to be with them. If you put them out there a third place, somewhere else in the world, hanging off some other division, you are going to have to go three places. The idea of the whole thing is to make this so the state insurance company is similar to the private insurance companies as far as how you deal with them if you are injured, or if you don't think you are getting what the law allows you. Then those compliance people are responsible to make sure that the private insurance companies. and now this mutual insurance company of Montana, follow the laws. I think you just screw it up if you don't leave it with the Department of Labor. The insurance company is going to be over at the Department of Administration.

WHALEN: Jerry, I think you are missing the point of what I am trying to say. I understand the need to separate the fund and the division. I use the term "division" but obviously it will have a new name, but whatever the duties the division used to have are still going to be under the Department of Labor and Industry. It bothers me that the court is going to be under the same department.

Vote:

On Rep. Whalen's amendment.

The amendment FAILED. Those voting for the amendment were Whalen and O'Keefe.

Motion:

COCCHIARELLA: Move to adopt the amendment as shown on page 34, line 23 of the grey bill.

Vote:

The amendment was ADOPTED unanimously.

Motion:

McCORMICK: Moved the bill DO PASS AS AMENDED.

Vote:

SB 428 PASSED AS AMENDED, unanimously.

Rep. Fred Thomas will carry this bill on the floor of the House.

- - - - - - - -

DISPOSITION OF SB 372

Motion:

KILPATRICK: Moved to DO CONCUR IN SB 372.

Discussion:

None

Vote:

Unanimous vote to DO CONCUR IN SB 372.

Rep. Smith will carry SB 372 on the House floor.

- - - - - - - -

DISPOSITION OF SB 309

Motion:

KILPATRICK: Moved to DO NOT CONCUR IN SB 309.

DAILY ROLL CALL

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-20-89

NAME	PRESENT	ABSENT	EXCUSED
Rep. Angela Russell, Chairman	✓		
Rep. Lloyd "Mac" McCormick,VC	✓		
Rep. Vicki Cocchiarella	✓		
Rep. Duane Compton			✓
Rep. Jerry Driscoll	✓		
Rep. Bob Pavlovich			✓
Rep. Bill Glaser			✓
Rep. Tom Kilpatrick	✓		
Rep. Thomas Lee	✓		
Rep. Mark O'Keefe	✓		
Rep. Jim Rice	✓		
Rep. Richard Simpkins	✓		
Rep. Clyde Smith	✓		
Rep. Carolyn Squires	✓		
Rep. Fred Thomas			✓
Rep. Timothy Whalen	✓		

CS-30

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Gray SB428 -- Unofficial
March 17, 1989

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE STATE COMPENSATION MUTUAL INSURANCE FUND TO INSURE EMPLOYERS FOR WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LIABILITY; PROVIDING FOR A BOARD OF DIRECTORS; ESTABLISHING THE POWERS AND DUTIES OF THE BOARD AND THE CHIEF EXECUTIVE OFFICER OF THE STATE COMPENSATION MUTUAL INSURANCE FUND; TRANSFERRING THE OFFICE OF WORKERS' COMPENSATION JUDGE TO THE DEPARTMENT OF LABOR AND INDUSTRY; AMENDING SECTIONS 2-15-1014, ~~2-15-1702;~~ 2-18-103, 19-3-1002, 19-3-1007, 19-3-1202, 19-13-601, 33-1-102, 33-2-119, 33-16-1005, 33-16-1011, 33-17-502, 33-18-212, 37-72-101, 39-1-103, 39-71-116, 39-71-201, 39-71-203, 39-71-206, 39-71-207, 39-71-306 THROUGH 39-71-308, 39-71-403, 39-71-421, 39-71-604, 39-71-704, 39-71-901, 39-71-908, 39-71-910, 39-71-911, 39-71-913, 39-71-2303, 39-71-2307, 39-71-2308, 39-71-2321 THROUGH 39-71-2323, 39-71-2325, 39-71-2327, 39-71-2501, 39-72-201, ~~AND~~ 39-72-310, 50-71-102, AND 50-73-102, MCA; REPEALING SECTIONS 2-15-1702, 39-71-2301, 39-71-2302, 39-71-2304 THROUGH 39-21-2306, AND 39-71-2324, MCA; AND PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 8] grants rulemaking authority to the newly created state fund to adopt or repeal rules or amend existing rules to implement the new state compensation mutual insurance fund. The chief purposes of creating the state fund as a mutual insurer and placing it in a department other than the department of labor are:

(1) to remove the inherent conflict between the interests of the workers' compensation division in regulating all workers' compensation insurers in this state, including the state compensation insurance fund, and the interests of the state fund as a workers' compensation insurer; and

(2) to ensure the solvency of the new state fund.

The legislature recognizes that the fund actuary has determined that at June 30, 1988, a full funding deficiency of $157.3 million existed for the present state compensation insurance fund. The legislature intends that the new state compensation mutual insurance fund adopt rules in a manner that will assure the solvency of the new fund. Rates must be set on an actuarially sound basis as required by state law. ~~To further ensure the solvency of the state fund, it is not~~

~~the workers' compensation insurer of last resort, as the state fund presently is.~~ The new state fund would ~~not~~ be bound to insure all employers who apply to it for workers' compensation coverage~~, except for~~ AND SHALL INSURE state agencies. ~~It could refuse to insure an employer it considered a poor risk.~~

As the primary means of ensuring the solvency of the state fund, it must institute safety programs and set rates in a manner that awards employers who provide a safe working environment and penalizes employers who do not.

The legislature further intends that the new state fund institute programs to automate the processing of claims and payment of benefits. The state fund may contract out to the private sector certain claims administration and servicing functions if the state fund determines it to be cost-effective.

THE LEGISLATURE INTENDS THAT THE GOVERNOR SHALL IMPLEMENT STAGGERED TERMS IN NAMING THE INITIAL MEMBERS OF THE BOARD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Intent and purpose of plan.** It is the intent and purpose of the state fund to allow employers the option to insure their liability for workers' compensation and occupational disease coverage with a nonprofit, independent public corporation. ~~The state fund is a domestic mutual insurer. It is not~~ THE STATE FUND IS required to insure any employer in this state requesting coverage, and it may NOT refuse coverage for an employer~~, except a state agency~~ UNLESS AN ASSIGNED RISK PLAN IS ESTABLISHED UNDER [SECTION 12] AND IS IN EFFECT ~~, that the state fund determines to be a bad risk~~. The state fund must be neither more nor less than self-supporting. Premium rates must be set at a level sufficient to fund the insurance program, including the costs of administration, benefits, and adequate reserves. For the purpose of keeping the state fund solvent, it must implement ~~safety programs~~ VARIABLE PRICING LEVELS WITHIN INDIVIDUAL RATE CLASSIFICATIONS to reward an employer with a good safety record and penalize an employer with a poor safety record.

NEW SECTION. **Section 2. Definitions.** Unless the context requires otherwise, in [sections 1, 2, and 4 through ~~12~~ 11] the following definitions apply:

(1) "Board" means the board of directors of the state compensation mutual insurance fund provided for in [section 3].

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(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Executive director" means the chief executive officer of the state compensation mutual insurance fund.

(4) "State fund" means the state compensation mutual insurance fund provided for in [section 4]. It is also known as compensation plan No. 3 or plan No. 3.

NEW SECTION. **Section 3. Board of directors of the state compensation mutual insurance fund.** (1) There is a board of directors of the state compensation mutual insurance fund.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may employ its own staff.

(3) The board may provide for its own office space and the office space of the state fund.

(4) The board consists of five members appointed by the governor. The executive director of the state fund is an ex officio nonvoting member.

(5) At least three of the five members shall represent state fund policyholders and may be employees of state fund policyholders. At least three members of the board shall represent private, for-profit enterprises. A member of the board may not:

(a) represent or be an employee of an insurance company that is licensed to transact workers' compensation insurance under compensation plan No. 2; or

(b) be an employee of a self-insured employer under compensation plan No. 1.

(6) A member is appointed for a term of 4 years. The terms of board members must be staggered. A member of the board may serve no more than two 4-year terms. A member shall hold office until a successor is appointed and qualified.

(7) The ~~board is designated as~~ MEMBERS MUST BE APPOINTED AND COMPENSATED IN THE SAME MANNER AS MEMBERS OF a quasi-judicial board ~~for the purposes of~~ AS PROVIDED IN 2-15-124, except that the requirement that at least one member be an attorney does not apply.

NEW SECTION. **Section 4. State compensation mutual insurance fund**

created. There is a state compensation mutual insurance fund known as the state fund that is a nonprofit, independent public corporation established for the purpose of allowing an option for employers to insure their liability for workers' compensation and occupational disease coverage under this chapter. The state fund exists as a domestic mutual insurer as defined in 33-3-102.

NEW SECTION. **Section 5. Management of state fund -- powers and duties of the board.** (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of [sections 1, 2, and 4 through ~~12~~ 11], as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of [sections 1, 2, and 4 through ~~12~~ 11].

NEW SECTION. **Section 6. Personal liability excluded.** The members of the board, the executive director, and employees of the state fund are not liable personally, either jointly or severally, for any debt or obligation created or incurred by the state fund.

NEW SECTION. **Section 7. Appointment of executive director -- management staff.** The board shall appoint an executive director of the state fund who has general responsibility for the operations of the state fund. The executive director must have executive level experience, with knowledge of the insurance industry. The executive director must receive compensation as set by the board and serve at the pleasure of the board. The executive director may hire the management staff of the state fund, each of whom serves at the pleasure of the executive director.

NEW SECTION. **Section 8. Powers of the state fund -- rulemaking.** For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, in connection with the coverage, provide employers' liability insurance. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage

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of a small employer.

(2) sue and be sued;

(3) adopt, amend, and repeal rules relating to the conduct of its business;

(4) enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(5) collect and disburse money received;

(6) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. The state fund must belong to the national council on compensation insurance and shall use the classifications of employment adopted by the national council AND CORRESPONDING RATES AS A BASIS FOR SETTING ITS OWN RATES.

(7) pay the amounts determined due under a policy of insurance issued by the state fund;

(8) hire personnel;

(9) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until the unfunded liability of the state fund is eliminated AND ADEQUATE ACTUARIALLY DETERMINED RESERVES ARE DETERMINED.

(10) perform all functions and exercise all powers of a domestic mutual insurer that are necessary, appropriate, or convenient for the administration of the state fund.

NEW SECTION. **Section 9. Property of the state fund -- investment required.** All premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. The money collected by the state fund may not be used for any other purpose. However, state fund money must be invested by the board of investments provided for in 2-15-1808.

NEW SECTION. **Section 10. State fund a mutual insurance carrier.** (1) The state fund is a domestic mutual insurer controlled by the laws relating to the regulation of domestic mutual insurers in this state. However, the formation, incorporation, bylaws, and bonding requirements set forth in Title 33, chapter 3, do not apply to the state fund. THE STATE FUND IS NOT A MEMBER

INSURER FOR THE PURPOSES OF THE INSURANCE GUARANTY ASSOCIATION ESTABLISHED PURSUANT TO TITLE 33, CHAPTER 10, PART 1.

(2) The commissioner of insurance may not terminate the operations of the state fund based on insolvency due to the unfunded liability that is recognized to exist on the date of passage of [sections 1, 2, and 4 through ~~12~~ 11] ~~and recognized in [section 12]~~.

(3) ~~The~~ IF AN ASSIGNED RISK PLAN IS ESTABLISHED AND ADMINISTERED PURSUANT TO [SECTION 12], THE state fund is subject to the premium tax liability for insurers as provided in 33-2-705 BASED ON EARNED PREMIUM AND PAID ON REVENUE FROM THE PREVIOUS FISCAL YEAR.

NEW SECTION. **Section 11. Assets and liabilities of prior state fund.** All assets and funds held by the state compensation insurance fund established in 39-71-2301 through 39-71-2308 and 39-71-2321 through 39-71-2327 must be transferred to the state fund, and the state fund shall assume liability for all outstanding claims and indebtedness of the previously existing state fund.

~~NEW SECTION. Section 12. Unfunded liability. (1) It is recognized at the date of creation of the state fund that there exists an unfunded liability that is being assumed by the newly created state fund for the prior state compensation insurance fund's liability for industrial injuries and occupational diseases that occurred prior to July 1, 1987. To assist the state fund in alleviating the unfunded liability, the premium taxes collected by the state from the following sources must be transferred to the newly created state fund:~~

~~(a) the state fund;~~

~~(b) excess or reinsurance policies on self-insurers writing coverage on a self-insurer's workers' compensation program under compensation plan No. 1; and~~

~~(c) private insurance carriers writing workers' compensation insurance under compensation plan No. 2.~~

~~(2) The premium taxes must be transferred to the state fund for payment of the unfunded liability. The premium tax payments must continue until the unfunded liability has been paid, at which time the premium taxes must be paid to the general fund.~~

NEW SECTION. **Section 12. Assigned risk plan.** (1) ~~The commissioner of insurance shall promulgate~~ FOLLOWING THE DATE ON WHICH THE

PROVISIONS OF [THIS ACT] ARE IMPLEMENTED BUT NO LATER THAN DECEMBER 31, 1990, THE COMMISSIONER OF THE DEPARTMENT OF LABOR AND INDUSTRY MAY ORDER THE ESTABLISHMENT OF and administer a plan to equitably apportion among the state fund, plan No. 3, and private insurers, plan No. 2, the coverage required by this chapter for employers who are unable to procure coverage through ordinary methods. IN DETERMINING WHETHER TO ORDER AN ASSIGNED RISK PLAN TO BE ESTABLISHED, THE COMMISSIONER SHALL CONSIDER THE EFFECT A PLAN WOULD HAVE ON THE AVAILABILITY OF WORKERS' COMPENSATION INSURANCE AND THE NEED TO PROVIDE COMPETITIVE WORKERS' COMPENSATION PREMIUM RATES FOR EMPLOYERS IN THIS STATE. IF THE COMMISSIONER ORDERS THE ESTABLISHMENT OF AN ASSIGNED RISK PLAN, IT MAY NOT TAKE EFFECT UNTIL AT LEAST 6 MONTHS FOLLOWING THE COMMISSIONER'S ORDER CREATING THE PLAN.

(2) All plan No. 2 insurers and the state fund shall subscribe to and participate in the assigned risk plan.

(3) If an insurer refuses to accept its equitable apportionment under the assigned risk plan, the commissioner of insurance may suspend or revoke the insurer's authority to issue workers' compensation ~~coverage contracts~~ INSURANCE POLICIES in this state.

(4) IF AN ASSIGNED RISK PLAN IS ESTABLISHED AND IN EFFECT, THE STATE FUND, PLAN NO. 3, IS NOT REQUIRED TO INSURE ANY EMPLOYER IN THIS STATE REQUESTING COVERAGE, AND IT MAY REFUSE COVERAGE FOR AN EMPLOYER, EXCEPT FOR A STATE AGENCY.

(5) IF AN ASSIGNED RISK PLAN IS ESTABLISHED AND IN EFFECT, AN EMPLOYER WHO IS REFUSED THE COVERAGE REQUIRED BY THIS CHAPTER BY THE STATE FUND, PLAN NO. 3, AND BY AT LEAST TWO PRIVATE INSURERS, PLAN NO. 2, MAY BE ASSIGNED COVERAGE BY THE COMMISSIONER UNDER THE ASSIGNED RISK PLAN PURSUANT TO THE PROCEDURE ESTABLISHED BY THE COMMISSIONER FOR THE EQUITABLE APPORTIONMENT OF COVERAGE.

Section 13. Section 39-71-116, MCA, is amended to read:

"**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the ~~division~~ DEPARTMENT ~~of workers' compensation~~ prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists).

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(4) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(5) "Days" means calendar days, unless otherwise specified.

(6) "Department" means the department of labor and industry.

~~(7) "Division" means the division of workers' compensation insurance compliance of the department of labor and industry provided for in 2-15-1702.~~

~~(8)~~(7) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

~~(9)~~(8) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state ~~compensation insurance~~ fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

~~(10)~~(9) "Invalid" means one who is physically or mentally incapacitated.

~~(11)~~(10) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

~~(12)~~(11) "Order" means any decision, rule, direction, requirement, or standard of the ~~division~~ DEPARTMENT or any other determination arrived at or decision made by the ~~division~~ DEPARTMENT.

~~(13)~~(12) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year; provided, that an estimate may be made by the ~~division~~ DEPARTMENT for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the ~~division~~ DEPARTMENT, as the case may actually be, on December 31 of such current year.

~~(14)~~(13) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss, or both.

~~(15)~~(14) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker is unable to return to work in the worker's job pool after exhausting all options set forth in 39-71-1012.

~~(16)~~(15) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

~~(17)~~(16) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

~~(18)~~(17) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or

special charter, town, or village.

~~(19)~~(18) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(20)~~(19) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

~~(21)~~(20) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

~~(22)~~(21) "Year", unless otherwise specified, means calendar year."

Section 14. Section 39-71-201, MCA, is amended to read:

"39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the ~~division~~ DEPARTMENT must administer are to be paid upon lawful appropriation. The following ~~moneys~~ money collected by the ~~division~~ DEPARTMENT ~~shall~~ must be deposited in the state treasury to the credit of the workers' compensation administrative fund and ~~shall~~ must be used for the administrative expenses of the ~~division~~ DEPARTMENT:

(a) all fees and penalties provided in 39-71-205 and 39-71-304;

(b) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state ~~insurance~~ fund. The assessments ~~shall~~ must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, no assessment of the plan No. 1 employer or plan No. 2 insurer ~~shall~~ may be less than $200. The assessments ~~shall~~ must be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 ~~shall~~ must be assessed

an amount sufficient to fund its direct costs and an equitable portion of the indirect costs as referred to above. Other sources of revenue, including unexpended funds from the preceding fiscal year, ~~shall~~ must be used to reduce the costs before levying the assessments.

(2) The administration fund ~~shall~~ must be debited with expenses incurred by the ~~division~~ DEPARTMENT in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the ~~division~~ DEPARTMENT either within or without the state.

(3) Disbursements from the administration money ~~shall~~ must be made after being approved by the ~~division~~ DEPARTMENT upon claim therefor."

Section 15. Section 39-71-203, MCA, is amended to read:

"39-71-203. **Powers of ~~division~~ DEPARTMENT – rules ~~--staffing~~.** (1) The ~~division~~ DEPARTMENT is hereby vested with full power, authority, and jurisdiction to do and perform any and all things~~, whether herein specifically designated or in addition thereto,~~ that are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

(2) The ~~division~~ DEPARTMENT may adopt rules to carry out the provisions of this chapter.

~~(3) The division shall employ sufficient personnel to allow it to meet the claims processing goals contained in 39-71-604. The division shall implement staffing patterns that are supported by indicators of workload. The open file is the workload indicator for claims processing, and the number of open claims per claims examiner may not be less than 300. The claims support staff, including the file, medical pay, and new claims units, may not exceed two FTEs per claims examiner. The administrative and underwriting staffing must be based on the number of premium paying policyholders and may not exceed 1.4 FTEs per 1,000 policyholders.~~

~~(4) The division administrator shall submit a revised operation plan to the budget office for review and approval and to the legislative finance committee for review whenever increases or decreases of staff are necessary to implement the provisions of subsection (3).~~

~~(5) Funds from the state special revenue fund shall be used to implement~~

~~subsection (3).~~"

Section 16. Section 39-71-206, MCA, is amended to read:

"**39-71-206. Legal ~~advisers~~ adviser** ADVISERS **of ~~division~~** DEPARTMENT and state fund. ~~(1)~~ The attorney general ~~shall be~~ is the legal adviser of the ~~division~~ DEPARTMENT and the state fund and shall represent ~~it~~ either entity in all proceedings ~~whenever so~~ if requested by the ~~division~~ DEPARTMENT or state fund ~~any member thereof~~. THE ~~DIVISION~~ DEPARTMENT AND STATE FUND MAY EMPLOY OTHER ATTORNEYS OR LEGAL ADVISERS AS THEY CONSIDER NECESSARY.

~~(2) The division may, in the investigation and defense of cases under plan No. 3 of the Workers' Compensation Act, employ such other attorney or legal adviser as it deems necessary and pay for the same out of the industrial insurance account in the expendable trust fund.~~"

Section 17. Section 39-71-306, MCA, is amended to read:

"**39-71-306. ~~Plan one employers and plan two insurers~~ Insurers to file ~~duplicate receipts~~** SUMMARY REPORTS OF BENEFITS **paid for injuries and statements of medical expenditures.** Every ~~employer coming under the provisions of compensation plan No. 1 and every insurer coming under the provisions of compensation plan No. 2~~ insurer shall, on or before the 15th day of each and every month, file with the ~~division~~ DEPARTMENT:

(1) ~~duplicate receipts~~ SUMMARY REPORTS OF BENEFITS for all payments made during the previous month to injured workers or their beneficiaries or dependents; and

(2) statements showing the amounts expended during the previous month for medical, surgical, and hospital services for injured workers and for the burial of deceased workers."

Section 18. Section 39-71-307, MCA, is amended to read:

"**39-71-307. Employers and insurers to file reports of accidents.** (1) Every employer ~~of labor~~ and every insurer is ~~hereby~~ required to file with the ~~division~~ DEPARTMENT, under ~~such~~ division DEPARTMENT rules ~~as the division may from time to time make~~, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to ~~such person~~ the employee. ~~Such~~ The reports ~~shall~~ must be furnished to the ~~division~~ DEPARTMENT in ~~such~~ the form and ~~such~~ detail as the

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~~division~~ DEPARTMENT ~~shall from time to time prescribe~~ prescribes and ~~shall make~~ must provide specific answers to all questions required by the ~~division~~ DEPARTMENT under its rules.~~; except, in case he~~ However, if an ~~employee~~ EMPLOYER is unable to answer ~~any such questions, a good and sufficient reason shall be given for such failure~~ a question, he shall state the reason he is unable to answer.

(2) Every ~~insurance company~~ insurer transacting business under this chapter shall, at the time and in the manner prescribed by the ~~division~~ DEPARTMENT, make and file with the ~~division~~ DEPARTMENT ~~such~~ the reports of accidents as the ~~division~~ DEPARTMENT ~~may require~~ requires."

Section 19. Section 39-71-308, MCA, is amended to read:

"39-71-308. Neglect or refusal of public corporation to file payroll reports -- arbitrary assessment by ~~division~~ DEPARTMENT. ~~Whenever any~~ If a public corporation insured by the state ~~compensation insurance~~ fund neglects or refuses to file prescribed payroll reports of its employees, the ~~division~~ DEPARTMENT may levy an arbitrary assessment upon ~~such~~ the public corporation in an amount of $75 for each ~~such~~ assessment~~, which assessments shall~~ The assessment must be collected in the manner provided in this chapter for the collection of assessments."

Section 20. Section 39-71-403, MCA, is amended to read:

"39-71-403. Plan three exclusive for state agencies -- election of plan by other public corporations. (1) ~~Where~~ If a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, ~~shall be~~ are exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by any state agency ~~shall be~~ are considered to be ordinary and necessary expense of the agency, and the agency shall make appropriation of and pay ~~such~~ the sums into the state ~~compensation insurance~~ fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, employer; plan No. 2, insurer; or plan No. 3, state ~~insurance~~ fund; separately or jointly with any other public corporation, other

than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance. A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and chapter 72 and to discharge all liabilities that reasonably incur during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and chapter 72 and for actual and necessary expenses required for the efficient administration of the fund.

(4) All money in the fund established under subsection (3) not needed to meet immediate expenditures must be invested by the governing body of the public corporation, and all proceeds of the investment shall be credited to the fund."

Section 21. Section 39-71-421, MCA, is amended to read:

"**39-71-421. Financial incentives to institute safety programs.** ~~The state compensation insurance fund, plan No. 3, and private~~ Private ~~insurers, plan No. 2,~~ INSURERS may provide financial incentives to an employer who implements a formal safety program. ~~The insurance carrier~~ An insurer may provide to an employer a premium discount that reflects the degree of risk diminished by the implemented safety program."

Section 22. Section 39-71-604, MCA, is amended to read:

"**39-71-604. Application for compensation.** (1) ~~Where~~ If a worker is entitled to benefits under this chapter, the worker shall file with the insurer or the ~~division~~ DEPARTMENT all reasonable information needed by the insurer to determine compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the ~~division~~ DEPARTMENT without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.

(2) ~~Where~~ If death results from an injury, the parties entitled to compensation or someone in their behalf shall file a claim with the insurer or the ~~division~~ DEPARTMENT. The claim must be accompanied with proof of death

and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the ~~division~~ DEPARTMENT.

~~(3) The goal of the division is to process all claims for compensation within 14 days after initial acceptance of liability for a claim.~~"

Section 23. Section 39-71-704, MCA, is amended to read:

"**39-71-704. Payment of medical, hospital, and related services -- fee schedules and hospital rates.** (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following ~~shall~~ must be furnished:

(a) After the happening of the injury, the insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the ~~division~~ DEPARTMENT for the injuries sustained.

(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(2) A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, ~~shall~~ must be established annually by the ~~workers' compensation division~~ DEPARTMENT and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. Medical fees must be based on the median fees as billed to the state ~~compensation insurance~~ fund during the year preceding the adoption of the schedule. THE STATE FUND SHALL REPORT FEES BILLED IN THE FORM AND AT THE TIMES REQUIRED BY THE ~~DIVISION~~ DEPARTMENT. The ~~division~~ DEPARTMENT shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining the median of billed medical fees. These rules ~~shall~~ must be modeled on the 1974 revision of the 1969 California Relative Value Studies.

(3) Beginning January 1, 1988, the ~~division~~ DEPARTMENT shall establish rates for hospital services necessary for the treatment of injured workers. Approved rates must be in effect for a period of 12 months from the date of approval. The ~~division~~ DEPARTMENT may coordinate this ratesetting function with other public agencies that have similar responsibilities.

(4) Notwithstanding subsection (2), beginning January 1, 1988, and ending January 1, 1990, the maximum fees payable by insurers must be limited to the relative value fee schedule established in January 1987. Notwithstanding subsection (3), the hospital rates payable by insurers must be limited to those set in January 1988, until December 31, 1989."

Section 24. Section 39-71-901, MCA, is amended to read:

"39-71-901. Definitions. As used in this part, the following definitions apply:

(1) "Vocationally handicapped" means a person who has a medically certifiable permanent impairment which is a substantial obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.

(2) "Certificate" means documentation issued by the ~~division~~ DEPARTMENT ~~of workers' compensation~~ to an individual who is vocationally handicapped.

(3) "Fund" means the subsequent injury fund."

Section 25. Section 39-71-908, MCA, is amended to read:

"39-71-908. Notification of fund of its potential liability under part -- review by fund. Not less than 90 or more than 150 days before the expiration of 104 weeks after the date of injury, the ~~employer, carrier, or the industrial insurance fund, as the case may be,~~ insurer shall notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after the date of the injury. The fund thereafter may review, at reasonable times, such information as the ~~employer, carrier, or industrial insurance fund~~ insurer has regarding the accident and the nature and extent of the injury and disability."

Section 26. Section 39-71-910, MCA, is amended to read:

"39-71-910. Procedure for resolving disputes as to liability under part. (1) If an employee was employed or retained in employment under the provisions of this part and a dispute or controversy arises as to payment of benefits or the liability therefor, the ~~division~~ DEPARTMENT shall hold a hearing and resolve all

disputes. On motion made in writing by the ~~employer, carrier, or industrial insurance fund~~ insurer, the administrator shall join the fund as a party defendant.

(2) The ~~division~~ DEPARTMENT, within 5 days of the entry of an order joining the fund as a party defendant, shall give the fund written notice thereof not less than 20 days before the date of hearing and shall include the ~~name~~ names of the employee and the ~~employer~~ insurer and the date of the alleged injury or disability. The fund named as a defendant ~~shall have~~ has 10 days after the date of notification to file objections to being named as a party defendant. On the date of the hearing at which the liability of the parties is determined, the hearing examiner first shall hear arguments and take evidence concerning the joinder as party defendant. If the fund has filed timely objection and if argument and evidence warrant, the hearing examiner shall grant a motion to dismiss.

(3) At the time of the hearing, the ~~employer~~ insurer and fund may appear, cross-examine witnesses, give evidence, and defend both on the issue of liability of the ~~employer~~ insurer to the employee and on the issue of the liability of the fund.

(4) The hearing examiner shall make findings of fact and conclusions of law determining the respective liability of the ~~employer~~ insurer and the fund."

Section 27. Section 39-71-911, MCA, is amended to read:

"**39-71-911. Obligation to make payments on behalf of fund not an independent liability.** The obligation imposed by this part on the ~~employer, carrier, or industrial insurance fund~~ insurer to make payments on behalf of the fund does not impose an independent liability on the ~~employer, carrier, or industrial insurance fund~~ insurer."

Section 28. Section 39-71-913, MCA, is amended to read:

"**39-71-913. Payments by fund directly to persons entitled.** If the ~~employer, carrier, or the industrial insurance fund~~ insurer does not make the payments on behalf of the fund, the fund may make the payments directly to the persons entitled to the payments."

Section 29. Section 39-71-2303, MCA, is amended to read:

"**39-71-2303. Manner of electing -- contract or policy of insurance -- payment of premium.** The ~~division~~ state fund shall prescribe the procedure by which ~~employers~~ an employer may elect to be bound by compensation plan No. 3, the effective time of ~~such~~ the election, and the manner in which ~~such~~ the election is

terminated for reasons other than default in payment of premiums. Every employer electing to be bound by compensation plan No. 3 ~~shall~~ must receive from the ~~division~~ state fund a contract or policy of insurance in a form approved by the ~~division~~ DEPARTMENT. The premium ~~thereon shall~~ must be paid by the employer to the ~~division~~ state fund at such times as the ~~division shall prescribe~~ state fund prescribes and ~~shall~~ must be paid over by the ~~division~~ state fund to the state treasurer to the credit of the ~~industrial insurance expendable trust~~ state ~~mutual insurance~~ fund."

Section 30. Section 39-71-2307, MCA, is amended to read:

"**39-71-2307. Cancellation of coverage ~~under plan for default~~ -- thirty days' notice required.** The ~~division is hereby authorized in its discretion to~~ state fund may cancel an employer's right to operate under plan No. 3 of the Workers' Compensation Act for failure to pay the premiums due ~~OR BECAUSE OF A SIGNIFICANT CHANGE IN LIABILITY EXPOSURE~~. When the ~~division makes an order canceling~~ state fund cancels an employer's ~~right for failure to pay premiums~~ COVERAGE, ~~the division~~ it shall notify the employer of its intent to cancel the employer at least 30 days before the cancellation becomes effective. After the cancellation date, the employer ~~shall have~~ has the same status as an employer who is not enrolled under the Workers' Compensation Act."

Section 31. Section 39-71-2308, MCA, is amended to read:

"**39-71-2308. Collection in case of default.** (1) If ~~any~~ an employer under plan No. 3 ~~shall default~~ defaults in any payment to the ~~division~~ state fund, the state fund may collect the sum due ~~may be collected by an action at law~~ in a civil action in the name of the state.~~; and such right of action shall be~~ The right of action is cumulative.

(2) ~~When~~ If an employer's right to operate has been canceled by the ~~division~~ state fund for failure to pay premiums and ~~when the division in its discretion~~ the state fund finds that the property and assets of the employer are not sufficient to pay the premiums, the ~~division~~ state fund may compromise the claim for premiums and accept a payment of an amount less than the total amount due."

Section 32. Section 39-71-2321, MCA, is amended to read:

"**39-71-2321. What to be deposited in ~~industrial insurance expendable trust~~ STATE fund.** All premiums, penalties, recoveries by subrogation, interest earned

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upon money belonging to the state fund, and securities acquired by or through use of money ~~shall~~ must be deposited in the ~~industrial insurance expendable trust~~ state fund."

Section 33. Section 39-71-2322, MCA, is amended to read:

"**39-71-2322. Money in ~~industrial insurance~~ state fund held in trust -- disposition of funds upon repeal of chapter.** The ~~moneys~~ money coming into the ~~industrial insurance expendable trust~~ state fund ~~shall~~ must be held in trust for the purpose for which ~~such moneys were~~ the money was collected~~, and if this chapter shall be hereafter~~ If this chapter is repealed, ~~such moneys shall be~~ the money is subject to ~~such~~ the disposition ~~as may be~~ provided by the legislature repealing this chapter. In ~~default of such~~ the absence of a legislative provision, distribution ~~thereof shall~~ must be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing."

Section 34. Section 39-71-2323, MCA, is amended to read:

"**39-71-2323. Surplus in ~~industrial insurance expendable trust~~ state fund -- payment of dividends.** If at the end of any fiscal year there exists in the ~~industrial insurance expendable trust~~ state fund an excess of assets over liabilities and a reasonable surplus, such liabilities to include necessary reserves, which excess may be divided safely, then the ~~division~~ state fund may declare a dividend in ~~such~~ the manner as the rules of the ~~division may~~ state fund prescribe to those employers who have paid premiums into the ~~industrial insurance expendable trust~~ state fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or proportion of the balance to which the employer is entitled as dividends, the ~~division~~ state fund shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year."

Section 35. Section 39-71-2325, MCA, is amended to read:

"**39-71-2325. ~~Division~~ State fund to keep accounts of segregations.** The ~~division~~ state fund shall keep an accurate account of all ~~such~~ the segregations of the ~~industrial insurance expendable trust~~ state fund and shall divert from the fund any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security."

Section 36. Section 39-71-2327, MCA, is amended to read:

"~~39-~~71-2327. Earnings of ~~industrial insurance expendable trust~~ state fund to be credited to fund -- improper use a felony. All earnings made by the ~~industrial insurance expendable trust~~ state fund by reason of interest paid for the deposit thereof or otherwise ~~shall~~ must be credited to and become a part of the fund, and the making of profit, either directly or indirectly, by any person out of the use of the fund ~~shall constitute~~ is a felony. ~~and on conviction thereof shall subject the person making such profit to imprisonment in the state penitentiary for a term not exceeding 2 years or a fine not exceeding $5,000 or both such fine and imprisonment.~~ A person convicted of an offense under this section is punishable by imprisonment in the state prison for a term not to exceed 2 years or a fine of not more than $5,000, or both."

Section 37. Section 39-72-201, MCA, is amended to read:

"~~39-~~72-201. Administration of chapter. This chapter ~~shall be~~ is administered by the ~~division~~ DEPARTMENT ~~of workers' compensation~~."

Section 38. Section 39-72-310, MCA, is amended to read:

"~~39-~~72-310. Occupational disease coverage under workers' compensation plans. (1) Every employer enrolled under compensation plan No. 1 ~~(Title 39, chapter 71, part 21)~~, every insurer ~~writing workers' compensation coverage~~ under compensation plan No. 2 ~~(Title 39, chapter 71, part 22)~~, and the state ~~compensation insurance~~ fund under compensation plan No. 3 ~~(Title 39, chapter 71, part 23)~~, all provided for under the Workers' Compensation Act, are considered to also provide full coverage for claims under this chapter. Any policy of insurance for workers' compensation coverage under the Workers' Compensation Act written by a private insurance carrier or the state ~~compensation insurance~~ fund is considered to provide full occupational disease coverage under the provisions of this chapter.

(2) Except as provided in this chapter, the ~~division~~ DEPARTMENT shall apply the appropriate provisions of Title 39, chapter 71, parts 21, 22, and 23, to the administration of The Occupational Disease Act of Montana in the same manner as they are applied to the administration of the Workers' Compensation Act.

(3) Under compensation plan No. 3, any premiums and other receipts held by the ~~division~~ state fund for occupational disease insurance coverage ~~shall~~ must be transferred ~~and become part of~~ to the workers' compensation industrial

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insurance account, and payments for occupational disease claims by the state fund ~~shall~~ must be paid out of the industrial insurance account."

Section 39. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 and 2 do not apply to the following positions in state government:

(1) elected officials;

(2) county assessors and their chief deputy;

(3) officers and employees of the legislative branch;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, appointed by the legislature, or appointed by other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) teachers under the authority of the department of institutions;

(11) investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;

(12) four professional staff positions under the board of oil and gas conservation; ~~and~~

(13) assistant director for security of the Montana state lottery; and

(14) executive director and ~~employees~~ MANAGEMENT AND UPPER LEVEL SUPERVISORY POSITIONS of the state compensation mutual insurance fund."

Section 40. Section 33-17-502, MCA, is amended to read:

"33-17-502. Prohibition on holding out as consultant -- receiving fee. (1) Any person not licensed as an insurance consultant in this state who identifies or holds himself out to be an insurance consultant without having been licensed as an insurance consultant under this part or any person who uses any other designation or title which is likely to mislead the public and holds himself out in any manner as having particular insurance qualifications other than those for which he may be otherwise licensed or otherwise qualified is guilty of a

misdemeanor and upon conviction shall be fined $1,500.

(2) Any person not licensed as an insurance consultant with respect to the relevant kinds of insurance who receives any fee for examining, appraising, reviewing, or evaluating any insurance policy, annuity or pension contract, plan, or program or who shall make recommendations or give advice with regard to any of the above without first having been licensed by the commissioner as an insurance consultant is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(3) Nothing in this part applies to:

(a) licensed attorneys at law in this state acting in their professional capacity; OR

(b) an actuary or a certified public accountant who provides information, recommendations, advice, or services in his professional capacity if neither he nor his employer receives any compensation directly or indirectly on account of any insurance, bond, annuity or pension contract that results in whole or part from that information, recommendation, advice, or services; ~~or~~

~~(c) a duly licensed casualty insurance agent who accepts a fee from an insured for placement through the state compensation mutual insurance fund as provided in 33-18-212~~."

~~Section~~ **Section 41.** Section 33-18-212, MCA, is amended to read:

"**33-18-212. Illegal dealing in premiums -- improper charges for insurance.** (1) ~~No~~ A person ~~shall~~ may not willfully collect any sum as premium or charge for insurance, which insurance is not then provided or is not in due course to be provided (subject to acceptance of the risk by the insurer) by an insurance policy issued by an insurer as authorized by this code.

(2) ~~No~~ A person ~~shall~~ may not willfully collect as premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance and, as specified in the policy, in accordance with the applicable classifications and rates as filed with and approved by the commissioner; or in cases where classifications, premiums, or rates are not required by this code to be so filed and approved, such premiums and charges ~~shall~~ may not be in excess of or less than those specified in the policy and as fixed by the insurer. This provision ~~shall~~ may not be deemed to prohibit the charging and collection, by surplus lines agents licensed under chapter 2, part

3, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. It ~~shall~~ may not be ~~deemed~~ considered to prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy. ~~The provision of this subsection does not prohibit the collection from an insured of a placement fee, not to exceed 7 % of the annual premium, for placement through the state compensation mutual insurance fund by a duly licensed casualty insurance agent. This placement fee is not a premium as defined in 33-15-102.~~

(3) Each violation of this section ~~shall be~~ is punishable under 33-1-104."

~~Section 42. Section 2-15-1702, MCA, is amended to read:~~

~~"2-15-1702. Division of workers' compensation insurance compliance -- head. (1) There is a division of workers' compensation insurance compliance within the department. The division head is an administrator appointed by the governor as are directors in accordance with 2-15-111.~~

~~(2) The division is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the division may hire its own personnel, and 2-15-121(2)(d) does not apply."~~

Section 42. Section 2-15-1014, MCA, is amended to read:

"2-15-1014. Office of workers' compensation judge -- allocation -- appointment -- salary. (1) There is the office of workers' compensation judge. The office is allocated to the department of ~~administration~~ labor AND INDUSTRY for administrative purposes only as prescribed in 2-15-121.

(2) The governor shall appoint the workers' compensation judge for a term of 6 years in the same manner provided by Title 3, chapter 1, part 10, for the appointment of supreme or district court judges. A vacancy ~~shall~~ must be filled in the same manner as the original appointment.

(3) To be eligible for workers' compensation judge, a person must:

(a) have the qualifications necessary for district court judges found in Article VII, section 9, of the Montana constitution;

(b) devote full time to the duties of workers' compensation judge and not engage in the private practice of law.

(4) The workers' compensation judge is entitled to the same salary and other emoluments as that of a district judge but ~~shall~~ must be accorded

retirement benefits under the public employees' retirement system."

Section 43. Section 39-71-2501, MCA, is amended to read:

"**39-71-2501. (Temporary) Definitions.** As used in this part, the following definitions apply:

(1) "Board" means the board of examiners created in 2-15-1007.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Employer" has the meaning set forth in 39-71-117.

(4) "Payroll" means the payroll of an employer for each of the calendar quarters ending March 31, June 30, September 30, and December 31, for all employments covered under 39-71-401.

(5) "State fund" means the state compensation MUTUAL insurance fund ~~referred to in 39-71-2301~~.

(6) "Tax" means the workers' compensation payroll tax provided for in 39-71-2503.

(7) "Tax account" means the workers' compensation tax account created by 39-71-2504. (Terminates June 30, 1991--sec. 10, Ch. 664, L. 1987.)"

NEW SECTION. **Section 44.** STATE FUND TO SUBMIT NOTICE OF COVERAGE WITHIN THIRTY DAYS -- PENALTY FOR FAILURE. (1) THE STATE FUND SHALL, WITHIN 30 DAYS AFTER THE ISSUANCE OF AN INSURANCE POLICY, SUBMIT TO THE ~~DIVISION~~ DEPARTMENT THE NOTICE OF COVERAGE STATING THE EFFECTIVE DATE OF THE POLICY INSURING THE EMPLOYER AND OTHER INFORMATION THE ~~DIVISION~~ DEPARTMENT REQUIRES.

(2) THE ~~DIVISION~~ DEPARTMENT MAY ASSESS A PENALTY OF NO MORE THAN $200 AGAINST THE STATE FUND IF, AS A GENERAL BUSINESS PRACTICE, THE STATE FUND DOES NOT COMPLY WITH THE 30-DAY NOTICE REQUIREMENT.

NEW SECTION. **SECTION 45.** POLICY REMAINS IN EFFECT UNTIL CANCELED OR REPLACED -- TWENTY-DAY NOTIFICATION OF CANCELLATION REQUIRED. THE INSURANCE POLICY REMAINS IN EFFECT UNTIL CANCELED. CANCELLATION MAY TAKE EFFECT ONLY BY WRITTEN NOTICE TO THE NAMED INSURED AND TO THE ~~DIVISION~~ DEPARTMENT AT LEAST 20 DAYS PRIOR TO THE DATE OF CANCELLATION. HOWEVER, THE POLICY

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TERMINATES ON THE EFFECTIVE DATE OF A REPLACEMENT OR SUCCEEDING INSURANCE POLICY ISSUED TO THE INSURED. NOTHING IN THIS SECTION PREVENTS THE STATE FUND FROM CANCELING AN INSURANCE POLICY BEFORE A REPLACEMENT POLICY IS ISSUED TO THE INSURED.

Section 46. Section 33-2-119, MCA, is amended to read:

"33-2-119. Suspension or revocation for violations and special grounds. (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has:

(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;

(b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in another insurer. In considering suspension or revocation, the commissioner shall consider all relevant factors, including whether:

(i) after the reinsurance transaction all parties will be in compliance with Montana law; and

(ii) the transaction will substantially reduce protection and service to Montana policyholders;

(c) failed to accept an equitable apportionment of assigned coverage as required by [section ~~13~~ 12].

(2) The commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) is in unsound condition or in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay proper claims arising under its

policies, whether any such claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to such third person, or without just cause compels such insured or claimant to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or such an insured to secure full payment or settlement of such claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus lines insurer under part 3 of this chapter.

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."

Section 47. SECTION 37-72-101, MCA, IS AMENDED TO READ:

"37-72-101. Construction blasting restrictions -- license required -- definitions -- exemptions. (1) No person may engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the ~~workers' compensation division~~ DEPARTMENT.

(2) For the purposes of this chapter:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) ~~"division" means the division of workers' compensation division insurance compliance of the department of labor and industry provided for in 2-15-1702~~ "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND INDUSTRY;

(d) "explosive" has the meaning given in 50-38-101;

(e) "magazine" has the meaning given in 50-38-101.

(3) Nothing in this chapter applies to the private or commercial use of

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explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection must comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under and implementing 82-4-231(10)(e)."

Section 48. SECTION 50-71-102, MCA, IS AMENDED TO READ:

"50-71-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

(2) "Code" means a standard body of rules for safety formulated, adopted, and issued by the ~~division~~ DEPARTMENT under the provisions of this chapter.

(3) ~~"Division" means the division of workers' compensation insurance compliance of the department of labor and industry provided for in 2-15-1702~~ "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND INDUSTRY.

(4) "Employee" and "worker" are defined as in 39-71-118.

(5) "Employer" is defined as in 39-71-117.

(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change."

Section 49. SECTION 50-73-102, MCA, IS AMENDED TO READ:

"50-73-102. Definitions. As used in this chapter, the following definitions apply:

(1) ~~"Division" means the division of workers' compensation insurance compliance of the department of labor and industry provided for in 2-15-1702~~ "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND INDUSTRY and the state coal mine inspectors employed by the ~~division~~ DEPARTMENT.

(2) "Excavations" and "workings" mean all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working

places, whether abandoned or in use.

(3) "Gassy mine" means a mine is considered to be potentially gassy. The ~~division~~ DEPARTMENT may further define this term in its rules.

(4) "Mine" and "coal mine" mean all parts of the property of a mining plant under one management which contribute, directly or indirectly, to the mining or handling of coal.

(5) "Mine examiner" means a person charged with the examination of the condition of the mine before the miners are permitted to enter it and who is commonly known as the "fire boss".

(6) "Mine foreman" means a person who is charged with the general direction of the underground work or both the underground work and the outside work of a coal mine and who is commonly known and designated as "mine boss".

(7) "Operator", as applied to the party in control of a mine under this chapter, means the person, firm, or body corporate which is the immediate proprietor as owner or lessee of the plant and, as such, is responsible for the condition and management thereof.

(8) "Shaft" means any vertical opening through the strata which is or may be used for the purpose of ventilation or escape or for hoisting or lowering of men or material in connection with the mining of coal.

(9) "Slope" and "drift" mean respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft."

SECTION 50. SECTION 39-1-103, MCA, IS AMENDED TO READ:

"39-1-103. **Powers of department.** (1) In discharging the duties imposed upon the department, the commissioner or his authorized representatives may administer oaths, examine witnesses under oath, take depositions or cause same to be taken, deputize any citizen 18 years of age or older to serve subpoenas upon witnesses, and issue subpoenas for the attendance of witnesses before him in the same manner as for attendance before district courts.

(2) The commissioner may likewise cause to be inspected any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment.

~~(3) Nothing herein contained shall in any manner confer upon the~~

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~~commissioner the authority to interfere in any manner with the conduct of the matters under the control of the workers' compensation division, nor shall the commissioner be charged with the duty of enforcing any of the laws of the state pertaining to the affairs of the workers' compensation division or with the enforcement of the safety provisions of the Workers' Compensation Act.~~

~~(4)~~(3) Nothing in this chapter applies to labor violations preempted by federal law or regulation."

SECTION 51. SECTION 39-71-207, MCA, IS AMENDED TO READ:

"**39-71-207. Merit system.** Employees of the ~~division, except the administrator,~~ department are included within the joint merit system if such inclusion is required for the receipt of federal funds by 29 CFR 1902.3(h) or by any other federal law or regulation."

SECTION 52. SECTION 33-1-102, MCA, IS AMENDED TO READ:

"**33-1-102. Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs.** (1) No person shall transact a business of insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) No provision of this code shall apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of such corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of such organizations are authorized by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, ~~parts~~ part 21 ~~and 23~~, and related sections.

(6) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(7) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(8) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state whereby the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state whereby the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."

SECTION 53. SECTION 33-16-1005, MCA, IS AMENDED TO READ:

"**33-16-1005. Membership in rating organization required -- exception -- filings with commissioner.** (1) Every insurer, ~~except the division of workers' compensation~~ including the state compensation mutual insurance fund, writing workers' compensation insurance in this state shall be a member of a workers' compensation rating organization. No insurer may, at the same time, belong to more than one rating organization with respect to such insurance.

(2) A rating organization shall file with the insurance commissioner every manual of classifications and rules and every rating plan and advisory manual rates, including every modification of the foregoing. Every such filing shall state the effective date thereof. Any insurer writing pursuant to compensation plan No. 2 shall adhere to the manual rules and classifications and rating plans of the rating organization of which it is a member and may adopt by reference, in whole or in part, the advisory manual rates filed under this section. Nothing in this section, however, requires adherence by any insurer to any rates established or published by any rating organization."

SECTION 54. SECTION 33-16-1011, MCA, IS AMENDED TO READ:

"**33-16-1011. Classification and rating committee -- membership -- term.** (1) There is a classification and rating committee.

(2) The committee is composed of five voting members, consisting of:

(a) three representatives of private insurance carriers writing workers'

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compensation insurance in Montana. The members must reside in Montana and shall be appointed by the Montana commissioner of insurance.

(b) one licensed independent insurance agent who resides in Montana, appointed by the Montana commissioner of insurance; and

(c) one representative of the ~~division of workers' compensation~~ state compensation mutual insurance fund who is an employee of the ~~division~~ state fund and who ~~shall be~~ is appointed by the ~~administrator of the division~~ executive director of the state fund.

(3) Each member shall hold office for a period of 3 years. Any appointee who fills the vacancy of a member whose term has not expired shall fill only the remaining term and may be reappointed for a full term.

(4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a) and (2)(b) above, established private organizations representing insurance carriers and independent insurance agents may submit names of individuals they recommend for appointments. The commissioner of insurance shall give consideration to such names submitted before appointments are made. However, the commissioner of insurance is not required to appoint any person from the names submitted.

(5) The committee shall be funded from the operations budget of the rating organization. Committee members may, if they request, be paid their actual and necessary travel expenses."

SECTION 55. SECTION 19-3-1007, MCA, IS AMENDED TO READ:

"**19-3-1007. Allowance for duty-related disability.** (1) The annual amount of retirement allowance payable to a member eligible for disability retirement for duty-related reasons and granted prior to July 1, 1977, is 50% of his final compensation. However, the annual amount of retirement allowance is 25% of final compensation for any period during which the member has been awarded ~~compensation by the~~ workers' compensation ~~division~~, whether such compensation is received in periodic payments or in a lump sum. The annual amount of retirement allowance reverts to 50% of final compensation at the end of such period.

(2) Any retired member receiving a retirement allowance on July 1, 1977, who has previously been granted a duty-related disability under provisions in

effect on June 30, 1977, will be subject to the provisions of this section after July 1, 1977."

SECTION 56. SECTION 19-3-1002, MCA, IS AMENDED TO READ:

"19-3-1002. Eligibility for disability retirement. (1) Except as provided in subsection (2) and 19-3-1004, a member who is not eligible for service or early retirement but has completed 5 years of creditable service and has become disabled while in active service, as defined in 19-3-1001, is eligible for disability retirement.

(2) A member age 60 or older who has completed 5 years of creditable service and has had a duty-related accident forcing him to terminate his employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-related accident may conditionally waive his eligibility for a service retirement to be eligible for disability retirement. The waiver is effective only upon approval by the board of his application for disability retirement. The board shall determine whether a member has become disabled under the provisions of 19-3-1003. The board may request any information on file with the ~~workers' compensation division~~ state compensation mutual insurance fund concerning the duty-related accident. If no information is available, the board may request and the ~~division~~ state fund shall provide an investigative report on the disabling accident."

SECTION 57. SECTION 19-3-1202, MCA, IS AMENDED TO READ:

"19-3-1202. Amount of death benefit. The amount of death benefit is the sum of (1), (2), and (3) as follows:

(1) the member's accumulated contributions;

(2) an amount equal to one-twelfth of the compensation received by the member during the last 12 months of such compensation multiplied by the smaller of six or the number of years of his creditable service; provided, however, that this portion of the death benefit is not payable if the board receives a certification from the ~~workers' compensation division of the state of Montana~~ state compensation mutual insurance fund that it is paying compensation because the member's death resulted from injury or disease arising out of or in the course of employment; and

(3) the accumulated interest on the amounts in subsections (1) and (2) of this section to the first day of the month in which the benefit is paid."

SECTION 58. SECTION 19-13-601, MCA, IS AMENDED TO READ:

"19-13-601. Deduction remitted to firemen's association -- member's contributions. (1) Each employer shall retain from the monthly compensation of each active member a sum equal to 1% of his monthly compensation for his services as a firefighter and shall remit this amount on a monthly basis to the Montana state firemen's association for the payment of premiums on a group life and accidental death and dismemberment insurance policy for members and to defray expenses incurred by the association when representing members of the plan.

(2) The member's contribution to the retirement system for each active member is 6% of his monthly compensation.

(3) If a member receives compensation under the provisions of the Workers' Compensation Act, Title 39, chapter 71, the amount received must be included as part of his monthly compensation for purposes of determining contributions and service credits under the retirement system. Contributions made under this section, 19-13-604, and 19-13-605 must be based on the total compensation received by the member from his employer and from ~~the~~ workers' compensation ~~division~~ during the period of disability.

(4) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, as amended and applicable on July 1, 1987, shall pick up and pay the contributions which would be payable by the member under subsection (2) for service rendered after June 30, 1987.

(5) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(6) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's monthly compensation as defined in 19-13-

104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

NEW SECTION. **Section 59. Repealer.** Sections 2-15-1702, 39-71-2301, 39-71-2302, 39-71-2304 through 39-71-2306, and 39-71-2324, MCA, are repealed.

NEW SECTION. **Section 60. Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **Section 61. Codification instruction.** (1) [Sections 1, 2, ~~and~~ 4 through ~~12~~ 11, 44, AND 45] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 1, 2, ~~and~~ 4 through ~~12~~ 11, 44, AND 45].

(2) [Section 3] is intended to be codified as an integral part of Title 2, chapter 15, part 10, and the provisions of Title 2, chapter 15, part 10, apply to [section 3].

(3) [Section ~~13~~ 12] is intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [section ~~13~~ 12].

NEW SECTION. **Section 62. Reorganization procedure.** The provisions of sections 2-15-131 through 2-15-137 govern the creation of the state compensation mutual insurance fund and the transfer of the various functions contained in [this act] from the state ~~workers'~~ compensation INSURANCE fund to the state compensation mutual insurance fund.

NEW SECTION. **Section 63. Implementation.** (1) The governor shall by executive order implement the provisions of [this act].

(2) The governor may by executive order assign to the state compensation mutual insurance fund, in a manner consistent with [this act], functions allocated to the workers' compensation state fund provided for in Title 39, chapter 71, part 23, by the 51st legislature and not transferred by [this act].

NEW SECTION. **Section 64. Name change -- code commissioner instruction.** (1) In the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division", meaning the division of workers' compensation, are changed to "department of labor and industry" or "department", meaning the "department of

labor and industry".

(2) The code commissioner shall designate, in a manner consistent with [this act], workers' compensation insurance regulatory functions allocated to the division of workers' compensation by the 51st legislature to the department of labor and industry that are not so designated by [this act].

(3) Wherever it appears in 39-71-205, 39-71-222 through 39-71-224, 39-71-613, 39-71-902, 39-71-904, 39-71-910, or in law enacted by the 51st legislature, the code commissioner is directed to change the term "administrator" or "his" to "department", meaning the department of labor and industry.

NEW SECTION. Section 65. Effective dates. (1) [Sections 3, 7, ~~50~~ ~~54, 55~~ 39, 60 THROUGH 64, and this section] are effective on passage and approval.

(2) [Sections 1, 2, 4 through 6, ~~and~~ 8 through 38, AND 40 THROUGH ~~49~~ ~~53~~ 59] are effective upon signing of the executive order under [section ~~50~~ ~~55~~ 63] or on ~~October 1, 1989~~ JANUARY 1, 1990, whichever occurs earlier.

-END-

STANDING COMMITTEE REPORT

Mr. Speaker: We, the committee on Labor report that Senate Bill 428 (third reading copy -- blue) be concurred in as amended .

Signed: Angela Russell
Angela Russell, Chairman

[REP. THOMAS WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, line 16.
Following: "2-18-103,"
Insert: "19-3-1002, 19-3-1007, 19-3-1202, 19-13-601, 33-1-102,"
Following: "33-2-119,"
Insert: "33-16-1005, 33-16-1011,"

2. Title, line 17.
Following: "37-72-101,"
Insert: "39-1-103,"
Following: "39-71-206,"
Insert: "39-71-207,"

3. Page 2, line 24 through page 3, line 1.
Strike: line 24 through "is." on page 3, line 1

4. Page 3, line 1.
Strike: "not"

5. Page 3, line 3.
Strike: ", except for"
Insert: "and shall insure"

6. Page 3, lines 24 and 25.
Following: "corporation." on line 24
Strike: remainder of line 24 through "not" on line 25
Insert: "The state fund is"

7. Page 4, line 1.
Following: "may"
Insert: "not"

8. Page 4, line 2.
Strike: ", except a state agency"

Insert: "unless an assigned risk plan is established under [section 12] and is in effect"

9. Page 4, line 14.
Strike: "12"
Insert: "11"

10. Page 6, line 24.
Strike: "12"
Insert: "11"

11. Page 7, line 2.
Strike: "12"
Insert: "11"

12. Page 9, line 18.
Following: "fund."
Insert: "The state fund is not a member insurer for the purposes of the insurance guaranty association established pursuant to Title 33, chapter 10, part 1."

13. Page 9, lines 22 and 23.
Strike: "12" on line 22
Insert: "11"
Strike: "and" on line 22 through "12]" on line 23

14. Page 9, line 24.
Following: "(3)"
Strike: "The"
Insert: "If an assigned risk plan is established and administered pursuant to [section 12], the"

15. Page 10, line 10 through page 11, line 5.
Strike: section 12 in its entirety
Renumber: subsequent sections

16. Page 11, lines 6 and 7.
Strike: "The commissioner of insurance shall promulgate"
Insert: "Following the date on which the provisions of [this act] are implemented but no later than December 31, 1990, the commissioner of the department of labor and industry may order the establishment of"

17. Page 11, line 11.
Following: "methods."
Insert: "In determining whether to order an assigned risk plan to be established, the commissioner shall consider the effect a plan would have on the availability of workers' compensation

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insurance and the need to provide competitive workers' compensation premium rates for employers in this state. If the commissioner orders the establishment of an assigned risk plan, it may not take effect until at least 6 months following the commissioner's order creating the plan."

18. Page 11.
Following: line 18
Insert: "(4) If an assigned risk plan is established and in effect, the state fund, plan No. 3, is not required to insure any employer in this state requesting coverage, and it may refuse coverage for an employer, except for a state agency.

(5) If an assigned risk plan is established and in effect, an employer who is refused the coverage required by this chapter by the state fund, plan No. 3, and by at least two private insurers, plan No. 2, may be assigned coverage by the commissioner under the assigned risk plan pursuant to the procedure established by the commissioner for the equitable apportionment of coverage."

19. Page 12, line 3.
Page 14, lines 1, 2, 9, and 12.
Page 16, lines 8, 10, and 13.
Page 17, lines 15, 20, and 23.
Page 18, lines 2, 3, and 9.
Page 19, lines 8, 9, 11, and 12.
Page 20, lines 3, 14, 15, 20 (two places), and 23.
Page 21, lines 5, 6 (two places), 11, and 14.
Page 23, line 24.
Page 24, lines 4, 10, and 14.
Page 25, lines 5, 14, and 23 (two places).
Page 26, lines 5 and 9.
Page 27, line 4.
Page 28, lines 1 and 5.
Page 30, line 3.
Page 34, line 10.
Page 35, line 4.
Page 42, lines 3, 5, 6, and 14.
Page 46, line 23.
Page 47, lines 17 and 23.
Strike: "division", "division", "division", and "DIVISION"
Insert: "department"

20. Page 13, lines 10 through 12.
Strike: subsection (7) in its entirety
Renumber: subsequent subsections

21. Page 30, lines 16 and 17.
Following: "due" on line 16

Strike: remainder of line 16 through "EXPOSURE" on line 17

22. Page 37, line 22.
Following: "capacity;"
Insert: "or"

23. Page 38, line 4.
Strike: "; or"

24. Page 38, lines 5 through 8.
Strike: "(c)" on line 5 through "33-18-212" on line 8

25. Page 39, lines 11 through 16.
Strike: lines 11 through 16 in their entirety

26. Page 43, line 14.
Strike: "13"
Insert: "12"

27. Page 45, line 8.
Strike: "workers' compensation division"
Insert: "department"

28. Page 45, lines 21 through 23.
Following: "(c)" on line 21
Strike: remainder of line 21 through line 23
Insert: ""department" means the department of labor and industry;"

29. Page 46, line 25 through page 47, line 2.
Following: "(3)" on line 25
Strike: remainder of line 25 through page 47, line 2
Insert: ""Department" means the department of labor and industry."

30. Page 47, lines 14 through 16.
Following: "(1)" on line 14
Strike: remainder of line 14 through "industry" on line 16
Following: "~~2-15-1702~~"
Insert: ""Department" means the department of labor and industry"

31. Page 48.
Following: line 23
Insert: "Section 50. Section 39-1-103, MCA, is amended to read:

"39-1-103. Powers of department. (1) In discharging the duties imposed upon the department, the commissioner or his authorized representatives may administer oaths, examine witnesses under oath, take depositions or cause same to be taken,

deputize any citizen 18 years of age or older to serve subpoenas upon witnesses, and issue subpoenas for the attendance of witnesses before him in the same manner as for attendance before district courts.

(2) The commissioner may likewise cause to be inspected any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment.

~~(3) Nothing herein contained shall in any manner confer upon the commissioner the authority to interfere in any manner with the conduct of the matters under the control of the workers' compensation division, nor shall the commissioner be charged with the duty of enforcing any of the laws of the state pertaining to the affairs of the workers' compensation division or with the enforcement of the safety provisions of the Workers' Compensation Act.~~

~~(4)~~ (3) Nothing in this chapter applies to labor violations preempted by federal law or regulation."

Section 51. Section 39-71-207, MCA, is amended to read:

"39-71-207. Merit system. Employees of the ~~division, except the administrator,~~ department are included within the joint merit system if such inclusion is required for the receipt of federal funds by 29 CFR 1902.3(h) or by any other federal law or regulation."

Section 52. Section 33-1-102, MCA, is amended to read:

"33-1-102. Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs. (1) No person shall transact a business of insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) No provision of this code shall apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of such corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of such organizations are authorized by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, ~~parts~~ part 21 ~~and 23~~, and related sections.

(6) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(7) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(8) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state whereby the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state whereby the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."

Section 53. Section 33-16-1005, MCA, is amended to read:

"33-16-1005. Membership in rating organization required -- exception -- filings with commissioner. (1) Every insurer, ~~except the division of workers' compensation~~ including the state compensation mutual insurance fund, writing workers' compensation insurance in this state shall be a member of a workers' compensation rating organization. No insurer may, at the same time, belong to more than one rating organization with respect to such insurance.

(2) A rating organization shall file with the insurance commissioner every manual of classifications and rules and every rating plan and advisory manual rates, including every modification of the foregoing. Every such filing shall state the effective date thereof. Any insurer writing pursuant to compensation plan No. 2 shall adhere to the manual rules and classifications and rating plans of the rating organization of which it is a member and may adopt by reference, in whole or in part, the advisory manual rates filed under this section. Nothing in this section, however, requires adherence by any insurer to any rates established or published by any rating organization."

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(2) The committee is composed of five voting members, consisting of:

(a) three representatives of private insurance carriers writing workers' compensation insurance in Montana. The members must reside in Montana and shall be appointed by the Montana commissioner of insurance.

(b) one licensed independent insurance agent who resides in

Montana, appointed by the Montana commissioner of insurance; and

(c) one representative of the ~~division of workers' compensation~~ state compensation mutual insurance fund who is an employee of the ~~division~~ state fund and who ~~shall be~~ is appointed by the ~~administrator of the division~~ executive director of the state fund.

(3) Each member shall hold office for a period of 3 years. Any appointee who fills the vacancy of a member whose term has not expired shall fill only the remaining term and may be reappointed for a full term.

(4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a) and (2)(b) above, established private organizations representing insurance carriers and independent insurance agents may submit names of individuals they recommend for appointments. The commissioner of insurance shall give consideration to such names submitted before appointments are made. However, the commissioner of insurance is not required to appoint any person from the names submitted.

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(2) Any retired member receiving a retirement allowance on July 1, 1977, who has previously been granted a duty-related disability under provisions in effect on June 30, 1977, will be subject to the provisions of this section after July 1, 1977."

Section 56. Section 19-3-1002, MCA, is amended to read:

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(2) A member age 60 or older who has completed 5 years of creditable service and has had a duty-related accident forcing him to terminate his employment but who has not received or is ineligible to receive workers' compensation benefits under Title

39, chapter 71, for the duty-related accident may conditionally waive his eligibility for a service retirement to be eligible for disability retirement. The waiver is effective only upon approval by the board of his application for disability retirement. The board shall determine whether a member has become disabled under the provisions of 19-3-1003. The board may request any information on file with the ~~workers' compensation division~~ state compensation mutual insurance fund concerning the duty-related accident. If no information is available, the board may request and the ~~division~~ state fund shall provide an investigative report on the disabling accident."

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(1) the member's accumulated contributions;

(2) an amount equal to one-twelfth of the compensation received by the member during the last 12 months of such compensation multiplied by the smaller of six or the number of years of his creditable service; provided, however, that this portion of the death benefit is not payable if the board receives a certification from the ~~workers' compensation division of the state of Montana~~ state compensation mutual insurance fund that it is paying compensation because the member's death resulted from injury or disease arising out of or in the course of employment; and

(3) the accumulated interest on the amounts in subsections (1) and (2) of this section to the first day of the month in which the benefit is paid."

Section 58. Section 19-13-601, MCA, is amended to read:

"19-13-601. Deduction remitted to firemen's association -- member's contributions. (1) Each employer shall retain from the monthly compensation of each active member a sum equal to 1% of his monthly compensation for his services as a firefighter and shall remit this amount on a monthly basis to the Montana state firemen's association for the payment of premiums on a group life and accidental death and dismemberment insurance policy for members and to defray expenses incurred by the association when representing members of the plan.

(2) The member's contribution to the retirement system for each active member is 6% of his monthly compensation.

(3) If a member receives compensation under the provisions of the Workers' Compensation Act, Title 39, chapter 71, the amount received must be included as part of his monthly compensation for purposes of determining contributions and service credits under the retirement system. Contributions made under this section, 19-13-604, and 19-13-605 must be based on the total compensation received by the member from his employer and

from ~~the~~ workers' compensation ~~division~~ during the period of disability.

(4) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, as amended and applicable on July 1, 1987, shall pick up and pay the contributions which would be payable by the member under subsection (2) for service rendered after June 30, 1987.

(5) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(6) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's monthly compensation as defined in 19-13-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.""

Renumber: subsequent sections

32. Page 49, line 7.
Strike: "and"
Following: "through"
Strike: "12"
Insert: "11, 44, and 45"

33. Page 49, line 10.
Strike: "and"
Following: "through"
Strike: "12"
Insert: "11, 44, and 45"

34. Page 49, line 15.
Strike: "13"
Insert: "12"

35. Page 49, line 17.
Strike: "13"
Insert: "12"

36. Page 49, line 19.
Following: line 18
Insert: "(1)"

37. Page 49, line 24.

Following: line 23
Insert: "(2) It is intended that current employees of the division of workers' compensation whose functions are transferred to the state compensation mutual insurance fund shall retain employment rights consistent with their positions at the time of transfer."

38. Page 50.
Following: line 7
Insert: "NEW SECTION. Section 64. Name change -- code commissioner instruction. (1) In the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division", meaning the division of workers' compensation, are changed to "department of labor and industry" or "department", meaning the "department of labor and industry".

(2) The code commissioner shall designate, in a manner consistent with [this act], workers' compensation insurance regulatory functions allocated to the division of workers' compensation by the 51st legislature to the department of labor and industry that are not so designated by [this act].

(3) Wherever it appears in 39-71-205, 39-71-222 through 39-71-224, 39-71-613, 39-71-902, 39-71-904, 39-71-910, or in law enacted by the 51st legislature, the code commissioner is directed to change the term "administrator" or "his" to "department", meaning the department of labor and industry."
Renumber: subsequent section

39. Page 50, line 9.
Following: "~~50~~"
Strike: "54, 55"
Insert: "39, 60 through 64"

40. Page 50, line 11.
Strike: "and"
Following: "through"
Insert: "38, and 40 through"
Strike: "53"
Insert: "59"

41. Page 50, line 13.
Strike: "55"
Insert: "63"
Strike: "October 1, 1989"
Insert: "January 1, 1990"

COMMITTEE OF THE WHOLE AMENDMENT
SENATE BILL 428
Representative Fred Thomas

March 28, 1989 1:31 pm

Mr. Chairman: I move to amend SENATE BILL 428 (third reading copy -- blue).

Signed: Fred Thomas
Representative Fred Thomas

And, that such amendment to SENATE BILL 428 read as follows:

1. Page 49, line 19.
Strike: "2-15-131"
Insert: "2-15-132"

ADOPT

REJECT

HOUSE
SB 428

SENATE BILL NO. 428

INTRODUCED BY THAYER, NATHE, THOMAS, NOBLE, MEYER, DRISCOLL, PAVLOVICH, GRADY, MAZUREK, WILLIAMS, SMITH, SQUIRES, GLASER, RAPP-SVRCEK, RUSSELL, AKLESTAD, DEVLIN, RASMUSSEN, GRINDE, MARKS

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE STATE COMPENSATION MUTUAL INSURANCE FUND TO INSURE EMPLOYERS FOR WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LIABILITY; PROVIDING FOR A BOARD OF DIRECTORS; ESTABLISHING THE POWERS AND DUTIES OF THE BOARD AND THE CHIEF EXECUTIVE OFFICER OF THE STATE COMPENSATION MUTUAL INSURANCE FUND; TRANSFERRING THE OFFICE OF WORKERS' COMPENSATION JUDGE TO THE DEPARTMENT OF LABOR AND INDUSTRY; AMENDING SECTIONS 2-15-1014, ~~2-15-1702,~~ 2-18-103, 19-3-1002, 19-3-1007, 19-3-1202, 19-13-601, 33-1-102, 33-2-119, 33-16-1005, 33-16-1011, 33-17-502, 33-18-212, 37-72-101, 39-1-103, 39-71-116, 39-71-201, 39-71-203, 39-71-206, 39-71-207, 39-71-306 THROUGH 39-71-308, 39-71-403, 39-71-421, 39-71-604, 39-71-704, 39-71-901, 39-71-908, 39-71-910, 39-71-911, 39-71-913, 39-71-2303, 39-71-2307, 39-71-2308, 39-71-2321 THROUGH 39-71-2323, 39-71-2325, 39-71-2327, 39-71-2501, 39-72-201, AND 39-72-310, 50-71-102, AND 50-73-102, MCA; REPEALING SECTIONS 2-15-1702, 39-71-2301, 39-71-2302, 39-71-2304 THROUGH 39-21-2306, AND 39-71-2324, MCA; AND PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 8] grants rulemaking authority to the newly created state fund to adopt or repeal rules or amend existing rules to implement the new state compensation mutual insurance fund. The chief purposes of creating the state fund as a mutual insurer and placing it in a department other than the department of labor are:

(1) to remove the inherent conflict between the interests of the workers' compensation division in regulating all workers' compensation insurers in this state, including the state compensation insurance fund, and the interests of the state fund as a workers' compensation insurer; and

(2) to ensure the solvency of the new state fund.

The legislature recognizes that the fund actuary has determined that at June 30, 1988, a full funding deficiency of $157.3 million existed for the present state compensation insurance fund. The legislature intends that the new state compensation mutual insurance fund adopt rules in a manner that will assure the solvency of the new fund. Rates must be set on an actuarially sound basis as required by state law.

~~To--further-ensure-the-solvency-of-the-state-fund,-it-is-not the-workers'-compensation-insurer-of--last--resort,--as--the state--fund--presently--is.~~ The new state fund would ~~not~~ be bound to insure all employers who apply to it for workers' compensation coverage~~,--except--for~~ AND SHALL INSURE state agencies. ~~It--could--refuse--to--insure--an---employer---it considered-a-poor-risk.~~

As the primary means of ensuring the solvency of the state fund, it must institute safety programs and set rates in a manner that awards employers who provide a safe working environment and penalizes employers who do not.

The legislature further intends that the new state fund institute programs to automate the processing of claims and payment of benefits. The state fund may contract out to the private sector certain claims administration and servicing functions if the state fund determines it to be cost-effective.

THE LEGISLATURE INTENDS THAT THE GOVERNOR SHALL IMPLEMENT STAGGERED TERMS IN NAMING THE INITIAL MEMBERS OF THE BOARD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Intent and purpose of plan. It is the intent and purpose of the state fund to allow employers the option to insure their liability for workers'

compensation and occupational disease coverage with a nonprofit, independent public corporation. ~~The-state-fund-is a--domestic--mutual--insurer,--it--is--not~~ THE STATE FUND IS required to insure any employer in this state requesting coverage, and it may NOT refuse coverage for an employer~~,--except-a-state-agency,-that-the-state-fund-determines-to--be a-bad-risk~~ UNLESS AN ASSIGNED RISK PLAN IS ESTABLISHED UNDER [SECTION 12] AND IS IN EFFECT. The state fund must be neither more nor less than self-supporting. Premium rates must be set at a level sufficient to fund the insurance program, including the costs of administration, benefits, and adequate reserves. For the purpose of keeping the state fund solvent, it must implement ~~safety--programs~~ VARIABLE PRICING LEVELS WITHIN INDIVIDUAL RATE CLASSIFICATIONS to reward an employer with a good safety record and penalize an employer with a poor safety record.

NEW SECTION. **Section 2.** Definitions. Unless the context requires otherwise, in [sections 1, 2, and 4 through ~~12~~ 11] the following definitions apply:

(1) "Board" means the board of directors of the state compensation mutual insurance fund provided for in [section 3].

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Executive director" means the chief executive

officer of the state compensation mutual insurance fund.

(4) "State fund" means the state compensation mutual insurance fund provided for in [section 4]. It is also known as compensation plan No. 3 or plan No. 3.

NEW SECTION. **Section 3. Board of directors of the state compensation mutual insurance fund.** (1) There is a board of directors of the state compensation mutual insurance fund.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may employ its own staff.

(3) The board may provide for its own office space and the office space of the state fund.

(4) The board consists of five members appointed by the governor. The executive director of the state fund is an ex officio nonvoting member.

(5) At least three of the five members shall represent state fund policyholders and may be employees of state fund policyholders. At least three members of the board shall represent private, for-profit enterprises. A member of the board may not:

(a) represent or be an employee of an insurance company that is licensed to transact workers' compensation insurance under compensation plan No. 2; or

(b) be an employee of a self-insured employer under

compensation plan No. 1.

(6) A member is appointed for a term of 4 years. The terms of board members must be staggered. A member of the board may serve no more than two 4-year terms. A member shall hold office until a successor is appointed and qualified.

(7) The ~~board--is--designated--as~~ MEMBERS MUST BE APPOINTED AND COMPENSATED IN THE SAME MANNER AS MEMBERS OF a quasi-judicial board ~~for--the--purposes--of~~ AS PROVIDED IN 2-15-124, except that the requirement that at least one member be an attorney does not apply.

NEW SECTION. **Section 4. State compensation mutual insurance fund created.** There is a state compensation mutual insurance fund known as the state fund that is a nonprofit, independent public corporation established for the purpose of allowing an option for employers to insure their liability for workers' compensation and occupational disease coverage under this chapter. The state fund exists as a domestic mutual insurer as defined in 33-3-102.

NEW SECTION. **Section 5. Management of state fund -- powers and duties of the board.** (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any

power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of [sections 1, 2, and 4 through ~~12~~ 11], as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of [sections 1, 2, and 4 through ~~12~~ 11].

NEW SECTION. **Section 6. Personal liability excluded.** The members of the board, the executive director, and employees of the state fund are not liable personally, either jointly or severally, for any debt or obligation created or incurred by the state fund.

NEW SECTION. **Section 7. Appointment of executive director -- management staff.** The board shall appoint an executive director of the state fund who has general responsibility for the operations of the state fund. The executive director must have executive level experience, with knowledge of the insurance industry. The executive director must receive compensation as set by the board and serve at the pleasure of the board. The executive director may hire the management staff of the state fund, each of whom serves at the pleasure of the executive director.

NEW SECTION. **Section 8. Powers of the state fund -- rulemaking.** For the purposes of carrying out its functions,

the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, in connection with the coverage, provide employers' liability insurance. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.

(2) sue and be sued;

(3) adopt, amend, and repeal rules relating to the conduct of its business;

(4) enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(5) collect and disburse money received;

(6) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. The state fund must belong to the national council on compensation insurance and shall use the classifications of employment adopted by the national council AND CORRESPONDING RATES AS A BASIS FOR SETTING ITS OWN RATES.

(7) pay the amounts determined due under a policy of insurance issued by the state fund;

(8) hire personnel;

(9) declare dividends if there is an excess of assets

over liabilities. However, dividends may not be paid until the unfunded liability of the state fund is eliminated AND ADEQUATE ACTUARIALLY DETERMINED RESERVES ARE DETERMINED.

(10) perform all functions and exercise all powers of a domestic mutual insurer that are necessary, appropriate, or convenient for the administration of the state fund.

NEW SECTION. **Section 9.** **Property of the state fund -- investment required.** All premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. The money collected by the state fund may not be used for any other purpose. However, state fund money must be invested by the board of investments provided for in 2-15-1808.

NEW SECTION. **Section 10.** **State fund a mutual insurance carrier.** (1) The state fund is a domestic mutual insurer controlled by the laws relating to the regulation of domestic mutual insurers in this state. However, the formation, incorporation, bylaws, and bonding requirements set forth in Title 33, chapter 3, do not apply to the state fund. THE STATE FUND IS NOT A MEMBER INSURER FOR THE PURPOSES OF THE INSURANCE GUARANTY ASSOCIATION ESTABLISHED

PURSUANT TO TITLE 33, CHAPTER 10, PART 1.

(2) The commissioner of insurance may not terminate the operations of the state fund based on insolvency due to the unfunded liability that is recognized to exist on the date of passage of [sections 1, 2, and 4 through ~~12~~ 11] and ~~recognized in [section 12]~~.

(3) ~~The~~ IF AN ASSIGNED RISK PLAN IS ESTABLISHED AND ADMINISTERED PURSUANT TO [SECTION 12], THE state fund is subject to the premium tax liability for insurers as provided in 33-2-705 BASED ON EARNED PREMIUM AND PAID ON REVENUE FROM THE PREVIOUS FISCAL YEAR.

NEW SECTION. **Section 11.** **Assets and liabilities of prior state fund.** All assets and funds held by the state compensation insurance fund established in 39-71-2301 through 39-71-2308 and 39-71-2321 through 39-71-2327 must be transferred to the state fund, and the state fund shall assume liability for all outstanding claims and indebtedness of the previously existing state fund.

~~NEW SECTION. Section 12. Unfunded liability. (1) It is recognized at the date of creation of the state fund that there exists an unfunded liability that is being assumed by the newly created state fund for the prior state compensation insurance fund's liability for industrial injuries and occupational diseases that occurred prior to July 1, 1987. To assist the state fund in alleviating the~~

~~unfunded-liability,-the-premium-taxes-collected-by-the-state from--the-following-sources-must-be-transferred-to-the-newly created-state-fund:~~

~~(a)--the-state-fund;~~

~~(b)--excess-or-reinsurance--policies--on--self-insurers writing--coverage--on-a-self-insurer's-workers'-compensation program-under-compensation-plan-No.-1;-and~~

~~(c)--private--insurance---carriers---writing---workers' compensation-insurance-under-compensation-plan-No.-2.~~

~~(2)--The-premium-taxes-must-be-transferred-to-the-state fund--for-payment-of-the-unfunded-liability.-The-premium-tax payments-must-continue-until-the-unfunded-liability-has-been paid,-at-which-time-the-premium-taxes-must-be--paid--to--the general-fund.~~

NEW SECTION. **Section 12.** Assigned risk plan. (1) ~~The commissioner-of-insurance--shall--promulgate~~ FOLLOWING THE DATE ON WHICH THE PROVISIONS OF [THIS ACT] ARE IMPLEMENTED BUT NO LATER THAN DECEMBER 31, 1990, THE COMMISSIONER OF THE DEPARTMENT OF LABOR AND INDUSTRY MAY ORDER THE ESTABLISHMENT OF and administer a plan to equitably apportion among the state fund, plan No. 3, and private insurers, plan No. 2, the coverage required by this chapter for employers who are unable to procure coverage through ordinary methods. IN DETERMINING WHETHER TO ORDER AN ASSIGNED RISK PLAN TO BE ESTABLISHED, THE COMMISSIONER SHALL CONSIDER THE EFFECT A

PLAN WOULD HAVE ON THE AVAILABILITY OF WORKERS' COMPENSATION INSURANCE AND THE NEED TO PROVIDE' COMPETITIVE WORKERS' COMPENSATION PREMIUM RATES FOR EMPLOYERS IN THIS STATE. IF THE COMMISSIONER ORDERS THE ESTABLISHMENT OF AN ASSIGNED RISK PLAN, IT MAY NOT TAKE EFFECT UNTIL AT LEAST 6 MONTHS FOLLOWING THE COMMISSIONER'S ORDER CREATING THE PLAN.

(2) All plan No. 2 insurers and the state fund shall subscribe to and participate in the assigned risk plan.

(3) If an insurer refuses to accept its equitable apportionment under the assigned risk plan, the commissioner of insurance may suspend or revoke the insurer's authority to issue workers' compensation ~~coverage-contracts~~ INSURANCE POLICIES in this state.

(4) IF AN ASSIGNED RISK PLAN IS ESTABLISHED AND IN EFFECT, THE STATE FUND, PLAN NO. 3, IS NOT REQUIRED TO INSURE ANY EMPLOYER IN THIS STATE REQUESTING COVERAGE, AND IT MAY REFUSE COVERAGE FOR AN EMPLOYER, EXCEPT FOR A STATE AGENCY.

(5) IF AN ASSIGNED RISK PLAN IS ESTABLISHED AND IN EFFECT, AN EMPLOYER WHO IS REFUSED THE COVERAGE REQUIRED BY THIS CHAPTER BY THE STATE FUND, PLAN NO. 3, AND BY AT LEAST TWO PRIVATE INSURERS, PLAN NO. 2, MAY BE ASSIGNED COVERAGE BY THE COMMISSIONER UNDER THE ASSIGNED RISK PLAN PURSUANT TO THE PROCEDURE ESTABLISHED BY THE COMMISSIONER FOR THE EQUITABLE APPORTIONMENT OF COVERAGE.

Section 13. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the ~~division~~ DEPARTMENT ~~of workers' compensation~~ prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in

subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists).

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(4) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(5) "Days" means calendar days, unless otherwise specified.

(6) "Department" means the department of labor and industry.

~~(7) "Division" means the division of workers' compensation insurance compliance of the department of labor and industry provided for in 2-15-1702.~~

~~(8)~~(7) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

~~(9)~~(8) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state

~~compensation-insurance~~ fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

~~(10)~~(9) "Invalid" means one who is physically or mentally incapacitated.

~~(11)~~(10) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

~~(12)~~(11) "Order" means any decision, rule, direction, requirement, or standard of the ~~division~~ DEPARTMENT or any other determination arrived at or decision made by the ~~division~~ DEPARTMENT.

~~(13)~~(12) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year; provided, that an estimate may be made by the ~~division~~ DEPARTMENT for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the ~~division~~ DEPARTMENT, as the case may actually be, on December 31 of such current year.

~~(14)~~(13) "Permanent partial disability" means a

condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss, or both.

~~(15)~~(14) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker is unable to return to work in the worker's job pool after exhausting all options set forth in 39-71-1012.

~~(16)~~(15) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

~~(17)~~(16) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

~~(18)~~(17) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

~~(19)~~(18) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the

life or safety of the employee as the nature of the employment will reasonably permit.

~~(20)~~(19) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

~~(21)~~(20) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

~~(22)~~(21) "Year", unless otherwise specified, means calendar year."

Section 14. Section 39-71-201, MCA, is amended to read:

"39-71-201. **Administration fund.** (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the ~~division~~ DEPARTMENT must administer are to be paid upon lawful appropriation. The following ~~moneys~~ money collected by the ~~division~~ DEPARTMENT ~~shall~~ must be deposited in the state treasury to the credit of the workers' compensation administrative fund and ~~shall~~ must be used for the administrative expenses of the ~~division~~ DEPARTMENT:

(a) all fees and penalties provided in 39-71-205 and 39-71-304;

(b) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state ~~insurance~~ fund. The assessments ~~shall~~ must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, no assessment of the plan No. 1 employer or plan No. 2 insurer ~~shall~~ may be less than $200. The assessments ~~shall~~ must be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 ~~shall~~ must be assessed an amount sufficient to fund its direct costs and an equitable portion of the indirect costs as referred to above. Other sources of revenue, including unexpended funds from the preceding fiscal year, ~~shall~~ must be used to reduce the costs before levying the assessments.

(2) The administration fund ~~shall~~ must be debited with expenses incurred by the ~~division~~ DEPARTMENT in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the ~~division~~ DEPARTMENT either within or without the state.

(3) Disbursements from the administration money ~~shall~~ must be made after being approved by the ~~division~~ DEPARTMENT upon claim therefor."

Section 15. Section 39-71-203, MCA, is amended to read:

"39-71-203. Powers of ~~division~~ DEPARTMENT -- rules -- ~~staffing~~. (1) The ~~division~~ DEPARTMENT is hereby vested with full power, authority, and jurisdiction to do and perform any and all things~~,--whether-herein-specifically-designated or-in-addition-thereto,~~ that are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

(2) The ~~division~~ DEPARTMENT may adopt rules to carry out the provisions of this chapter.

~~(3)--The--division-shall-employ-sufficient-personnel-to allow-it-to-meet-the-claims-processing--goals--contained--in 39-71-604.--The--division--shall-implement-staffing-patterns~~

~~that-are-supported-by-indicators-of-workload.--The-open-file is-the-workload-indicator-for--claims--processing,--and--the number--of--open--claims-per-claims-examiner-may-not-be-less than-300.-The-claims--support--staff,--including--the--file, medical--pay,--and-new-claims-units,-may-not-exceed-two-FTEs per-claims-examiner.--The--administrative--and--underwriting staffing--must--be--based--on--the--number-of-premium-paying policyholders--and--may--not--exceed--1.4--FTEs--per---1,000 policyholders.~~

~~(4)--The--division-administrator-shall-submit-a-revised operation-plan-to-the-budget-office-for-review-and--approval and-to-the-legislative-finance-committee-for-review-whenever increases--or--decreases-of-staff-are-necessary-to-implement the-provisions-of-subsection-(3).~~

~~(5)--Funds-from-the-state-special-revenue-fund-shall-be used-to-implement-subsection-(3).~~"

Section 16. Section 39-71-206, MCA, is amended to read:

"39-71-206. Legal ~~advisers~~ adviser ADVISERS of ~~division~~ DEPARTMENT and state fund. ~~(1)~~ The attorney general ~~shall-be~~ is the legal adviser of the ~~division~~ DEPARTMENT and the state fund and shall represent ~~it~~ either entity in all proceedings ~~whenever--so~~ if requested by the ~~division~~ DEPARTMENT or state fund ~~any-member-thereof~~. THE ~~DIVISION~~ DEPARTMENT AND STATE FUND MAY EMPLOY OTHER ATTORNEYS OR

LEGAL ADVISERS AS THEY CONSIDER NECESSARY.

~~(2)--The-division-may,-in-the-investigation-and-defense of-cases-under-plan-No.-3-of-the-Workers'-Compensation--Act, employ--such--other--attorney--or--legal-adviser-as-it-deems necessary-and--pay--for--the--same--out--of--the--industrial insurance-account-in-the-expendable-trust-fund."~~

Section 17. Section 39-71-306, MCA, is amended to read:

"39-71-306. ~~Plan-one-employers-and-plan--two--insurers~~ Insurers to file ~~duplicate--receipts~~ SUMMARY REPORTS OF BENEFITS paid for injuries and statements of medical expenditures. Every ~~employer-coming-under-the-provisions-of compensation-plan-No.-1-and-every-insurer-coming--under--the provisions--of--compensation-plan-No.-2~~ insurer shall, on or before the 15th day of each and every month, file with the ~~division~~ DEPARTMENT:

(1) ~~duplicate-receipts~~ SUMMARY REPORTS OF BENEFITS for all payments made during the previous month to injured workers or their beneficiaries or dependents; and

(2) statements showing the amounts expended during the previous month for medical, surgical, and hospital services for injured workers and for the burial of deceased workers."

Section 18. Section 39-71-307, MCA, is amended to read:

"39-71-307. Employers and insurers to file reports of

accidents. (1) Every employer ~~of-labor~~ and every insurer is ~~hereby~~ required to file with the ~~division~~ DEPARTMENT, under such ~~division~~ DEPARTMENT rules ~~as-the-division-may-from-time to--time--make~~, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to ~~such person~~ the employee. ~~Such~~ The reports ~~shall~~ must be furnished to the ~~division~~ DEPARTMENT in ~~such~~ the form and ~~such~~ detail as the ~~division~~ DEPARTMENT ~~shall--from--time--to time--prescribe~~ prescribes and ~~shall--make~~ must provide specific answers to all questions required by the ~~division~~ DEPARTMENT under its rules. ~~,-except,-in-case-he~~ However, if an ~~employee~~ EMPLOYER is unable to answer ~~any-such-questions, a-good-and-sufficient-reason-shall-be-given-for-such-failure~~ a question, he shall state the reason he is unable to answer.

(2) Every ~~insurance---company~~ insurer transacting business under this chapter shall, at the time and in the manner prescribed by the ~~division~~ DEPARTMENT, make and file with the ~~division~~ DEPARTMENT ~~such~~ the reports of accidents as the ~~division~~ DEPARTMENT ~~may-require~~ requires."

Section 19. Section 39-71-308, MCA, is amended to read:

"39-71-308. Neglect or refusal of public corporation to file payroll reports -- arbitrary assessment by ~~division~~

DEPARTMENT. ~~Whenever any~~ If a public corporation insured by the state ~~compensation insurance~~ fund neglects or refuses to file prescribed payroll reports of its employees, the ~~division~~ DEPARTMENT may levy an arbitrary assessment upon ~~such~~ the public corporation in an amount of $75 for each ~~such~~ assessment. ~~, which assessments shall~~ The assessment must be collected in the manner provided in this chapter for the collection of assessments."

Section 20. Section 39-71-403, MCA, is amended to read:

"39-71-403. Plan three exclusive for state agencies -- election of plan by other public corporations. (1) ~~Where~~ If a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, ~~shall be~~ are exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by any state agency ~~shall be~~ are considered to be ordinary and necessary expense of the agency, and the agency shall make appropriation of and pay ~~such~~ the sums into the state ~~compensation insurance~~ fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, employer; plan No. 2, insurer; or plan No. 3, state ~~insurance~~ fund; separately or jointly with any other public corporation, other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance. A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and chapter 72 and to discharge all liabilities that reasonably incur during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and chapter 72 and for actual and necessary expenses required for the efficient administration of the fund.

(4) All money in the fund established under subsection (3) not needed to meet immediate expenditures must be invested by the governing body of the public corporation, and all proceeds of the investment shall be credited to the fund."

Section 21. Section 39-71-421, MCA, is amended to read:

"39-71-421. Financial incentives to institute safety programs. ~~The--state--compensation-insurance-fund,-plan-No.-3,-and-private~~ Private ~~insurers,-plan-No.--2,~~ INSURERS may provide financial incentives to an employer who implements a formal safety program. ~~The-insurance-carrier~~ An insurer may provide to an employer a premium discount that reflects the degree of risk diminished by the implemented safety program."

Section 22. Section 39-71-604, MCA, is amended to read:

"39-71-604. Application for compensation. (1) ~~Where~~ If a worker is entitled to benefits under this chapter, the worker shall file with the insurer or the ~~division~~ DEPARTMENT all reasonable information needed by the insurer to determine compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the ~~division~~ DEPARTMENT without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.

(2) ~~Where~~ If death results from an injury, the parties entitled to compensation or someone in their behalf shall file a claim with the insurer or the ~~division~~ DEPARTMENT. The claim must be accompanied with proof of death and proof

of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the ~~division~~ DEPARTMENT.

~~(3)--The--goal-of-the-division-is-to-process-all-claims for-compensation-within-14-days-after-initial-acceptance--of liability-for-a-claim.~~"

Section 23. Section 39-71-704, MCA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services -- fee schedules and hospital rates. (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following ~~shall~~ must be furnished:

(a) After the happening of the injury, the insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the ~~division~~ DEPARTMENT for the injuries sustained.

(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(2) A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, ~~shall~~ must be established annually by the ~~workers'---compensation division~~ DEPARTMENT and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. Medical fees must be based on the median fees as billed to the state ~~compensation insurance~~ fund during the year preceding the adoption of the schedule. THE STATE FUND SHALL REPORT FEES BILLED IN THE FORM AND AT THE TIMES REQUIRED BY THE ~~DIVISION~~ DEPARTMENT. The ~~division~~ DEPARTMENT shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining the median of billed medical fees. These rules ~~shall~~ must be modeled on the 1974 revision of the 1969 California Relative Value Studies.

(3) Beginning January 1, 1988, the ~~division~~ DEPARTMENT shall establish rates for hospital services necessary for the treatment of injured workers. Approved rates must be in effect for a period of 12 months from the date of approval. The ~~division~~ DEPARTMENT may coordinate this ratesetting function with other public agencies that have similar

responsibilities.

(4) Notwithstanding subsection (2), beginning January 1, 1988, and ending January 1, 1990, the maximum fees payable by insurers must be limited to the relative value fee schedule established in January 1987. Notwithstanding subsection (3), the hospital rates payable by insurers must be limited to those set in January 1988, until December 31, 1989."

Section 24. Section 39-71-901, MCA, is amended to read:

"**39-71-901. Definitions.** As used in this part, the following definitions apply:

(1) "Vocationally handicapped" means a person who has a medically certifiable permanent impairment which is a substantial obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.

(2) "Certificate" means documentation issued by the ~~division~~ DEPARTMENT ~~of---workers'---compensation~~ to an individual who is vocationally handicapped.

(3) "Fund" means the subsequent injury fund."

Section 25. Section 39-71-908, MCA, is amended to read:

"**39-71-908. Notification of fund of its potential**

liability under part -- review by fund. Not less than 90 or more than 150 days before the expiration of 104 weeks after the date of injury, the ~~employer, carrier, or the industrial insurance fund, as the case may be,~~ insurer shall notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after the date of the injury. The fund thereafter may review, at reasonable times, such information as the ~~employer, carrier, or industrial insurance fund~~ insurer has regarding the accident and the nature and extent of the injury and disability."

Section 26. Section 39-71-910, MCA, is amended to read:

"**39-71-910. Procedure for resolving disputes as to liability under part.** (1) If an employee was employed or retained in employment under the provisions of this part and a dispute or controversy arises as to payment of benefits or the liability therefor, the ~~division~~ DEPARTMENT shall hold a hearing and resolve all disputes. On motion made in writing by the ~~employer, carrier, or industrial insurance fund~~ insurer, the administrator shall join the fund as a party defendant.

(2) The ~~division~~ DEPARTMENT, within 5 days of the entry of an order joining the fund as a party defendant, shall give the fund written notice thereof not less than 20 days before the date of hearing and shall include the name

names of the employee and the ~~employer~~ insurer and the date of the alleged injury or disability. The fund named as a defendant ~~shall have~~ has 10 days after the date of notification to file objections to being named as a party defendant. On the date of the hearing at which the liability of the parties is determined, the hearing examiner first shall hear arguments and take evidence concerning the joinder as party defendant. If the fund has filed timely objection and if argument and evidence warrant, the hearing examiner shall grant a motion to dismiss.

(3) At the time of the hearing, the ~~employer~~ insurer and fund may appear, cross-examine witnesses, give evidence, and defend both on the issue of liability of the ~~employer~~ insurer to the employee and on the issue of the liability of the fund.

(4) The hearing examiner shall make findings of fact and conclusions of law determining the respective liability of the ~~employer~~ insurer and the fund."

Section 27. Section 39-71-911, MCA, is amended to read:

"**39-71-911. Obligation to make payments on behalf of fund not an independent liability.** The obligation imposed by this part on the ~~employer, carrier, or industrial insurance fund~~ insurer to make payments on behalf of the fund does not impose an independent liability on the ~~employer, carrier, or~~

~~industrial-insurance-fund~~ insurer."

Section 28. Section 39-71-913, MCA, is amended to read:

"39-71-913. Payments by fund directly to persons entitled. If the ~~employer,--carrier,--or--the--industrial insurance--fund~~ insurer does not make the payments on behalf of the fund, the fund may make the payments directly to the persons entitled to the payments."

Section 29. Section 39-71-2303, MCA, is amended to read:

"39-71-2303. Manner of electing -- contract or policy of insurance -- payment of premium. The ~~division~~ state fund shall prescribe the procedure by which ~~employers~~ an employer may elect to be bound by compensation plan No. 3, the effective time of ~~such~~ the election, and the manner in which ~~such~~ the election is terminated for reasons other than default in payment of premiums. Every employer electing to be bound by compensation plan No. 3 ~~shall~~ must receive from the ~~division~~ state fund a contract or policy of insurance in a form approved by the ~~division~~ DEPARTMENT. The premium ~~thereon--shall~~ must be paid by the employer to the ~~division~~ state fund at such times as the ~~division--shall--prescribe~~ state fund prescribes and ~~shall~~ must be paid over by the ~~division~~ state fund to the state treasurer to the credit of the ~~industrial--insurance--expendable--trust~~ state mutual

insurance fund."

Section 30. Section 39-71-2307, MCA, is amended to read:

"39-71-2307. Cancellation of coverage ~~under-plan-for default~~ -- thirty days' notice required. The ~~division--is hereby-authorized-in-its-discretion-to~~ state fund may cancel an employer's right to operate under plan No. 3 of the Workers' Compensation Act for failure to pay the premiums due ~~OR--BECAUSE--OF--A--SIGNIFICANT--CHANGE--IN--LIABILITY EXPOSURE~~. When the ~~division-makes-an-order-canceling~~ state fund cancels an employer's ~~right-for-failure-to-pay-premiums~~ COVERAGE, ~~the--division~~ it shall notify the employer of its intent to cancel the employer at least 30 days before the cancellation becomes effective. After the cancellation date, the employer ~~shall-have~~ has the same status as an employer who is not enrolled under the Workers' Compensation Act."

Section 31. Section 39-71-2308, MCA, is amended to read:

"39-71-2308. Collection in case of default. (1) If ~~any~~ an employer under plan No. 3 ~~shall-default~~ defaults in any payment to the ~~division~~ state fund, the state fund may collect the sum due ~~may-be-collected-by-an-action-at-law~~ in a civil action in the name of the state, ~~-and-such-right--of action-shall-be~~ The right of action is cumulative.

(2) When If an employer's right to operate has been

canceled by the ~~division~~ state fund for failure to pay premiums and ~~when-the-division-in-its-discretion~~ the state fund finds that the property and assets of the employer are not sufficient to pay the premiums, the ~~division~~ state fund may compromise the claim for premiums and accept a payment of an amount less than the total amount due."

Section 32. Section 39-71-2321, MCA, is amended to read:

"**39-71-2321. What to be deposited in ~~industrial insurance---expendable---trust~~ STATE fund.** All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money ~~shall~~ must be deposited in the ~~industrial-insurance-expendable-trust~~ state fund."

Section 33. Section 39-71-2322, MCA, is amended to read:

"**39-71-2322. Money in ~~industrial-insurance~~ state fund held in trust -- disposition of funds upon repeal of chapter.** The ~~moneys~~ money coming into the ~~industrial insurance--expendable-trust~~ state fund ~~shall~~ must be held in trust for the purpose for which ~~such-moneys-were~~ the money was collected.~~,--and--if-this-chapter-shall-be-hereafter~~ If this chapter is repealed, ~~such-moneys-shall-be~~ the money is subject to ~~such~~ the disposition ~~as-may-be~~ provided by the legislature repealing this chapter. In ~~default-of--such~~ the

absence of a legislative provision, distribution ~~thereof shall~~ must be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing."

Section 34. Section 39-71-2323, MCA, is amended to read:

"**39-71-2323. Surplus in ~~industrial-----insurance expendable--trust~~ state fund -- payment of dividends.** If at the end of any fiscal year there exists in the ~~industrial insurance--expendable--trust~~ state fund an excess of assets over liabilities and a reasonable surplus, such liabilities to include necessary reserves, which excess may be divided safely, then the ~~division~~ state fund may declare a dividend in ~~such~~ the manner as the rules of the ~~division may~~ state fund prescribe to those employers who have paid premiums into the ~~industrial-insurance-expendable-trust~~ state fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or proportion of the balance to which the employer is entitled as dividends, the ~~division~~ state fund shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year."

Section 35. Section 39-71-2325, MCA, is amended to read:

"**39-71-2325. ~~Division~~ State fund to keep accounts of**

segregations. The ~~division~~ state fund shall keep an accurate account of all ~~such~~ the segregations of the ~~industrial insurance--expendable-trust~~ state fund and shall divert from the fund any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security."

Section 36. Section 39-71-2327, MCA, is amended to read:

"39-71-2327. Earnings of ~~industrial----insurance expendable-trust~~ state fund to be credited to fund -- improper use a felony. All earnings made by the ~~industrial insurance-expendable-trust~~ state fund by reason of interest paid for the deposit thereof or otherwise ~~shall~~ must be credited to and become a part of the fund, and the making of profit, either directly or indirectly, by any person out of the use of the fund ~~shall-constitute~~ is a felony. ~~and-on conviction-thereof-shall--subject--the--person--making--such profit--to-imprisonment-in-the-state-penitentiary-for-a-term not-exceeding-2-years-or-a-fine-not-exceeding-$5,000-or-both such-fine-and-imprisonment.~~ A person convicted of an offense under this section is punishable by imprisonment in the state prison for a term not to exceed 2 years or a fine of not more than $5,000, or both."

Section 37. Section 39-72-201, MCA, is amended to

read:

"39-72-201. Administration of chapter. This chapter ~~shall-be~~ is administered by the ~~division~~ DEPARTMENT of ~~workers'-compensation~~."

Section 38. Section 39-72-310, MCA, is amended to read:

"39-72-310. Occupational disease coverage under workers' compensation plans. (1) Every employer enrolled under compensation plan No. 1 ~~(Title-39,--chapter--71,--part 21)~~, every insurer ~~writing-workers'-compensation-coverage~~ under compensation plan No. 2 ~~(Title-39,--chapter--71,--part 22)~~, and the state ~~compensation--insurance~~ fund under compensation plan No. 3 ~~(Title-39,-chapter-71,-part-23)~~, all provided for under the Workers' Compensation Act, are considered to also provide full coverage for claims under this chapter. Any policy of insurance for workers' compensation coverage under the Workers' Compensation Act written by a private insurance carrier or the state ~~compensation--insurance~~ fund is considered to provide full occupational disease coverage under the provisions of this chapter.

(2) Except as provided in this chapter, the ~~division~~ DEPARTMENT shall apply the appropriate provisions of Title 39, chapter 71, parts 21, 22, and 23, to the administration of The Occupational Disease Act of Montana in the same

manner as they are applied to the administration of the Workers' Compensation Act.

(3) Under compensation plan No. 3, any premiums and other receipts held by the ~~division~~ state fund for occupational disease insurance coverage ~~shall~~ must be transferred ~~and become part of~~ to the workers' compensation industrial insurance account, and payments for occupational disease claims by the state fund ~~shall~~ must be paid out of the industrial insurance account."

Section 39. Section 2-18-103, MCA, is amended to read:

"**2-18-103. Officers and employees excepted.** Parts 1 and 2 do not apply to the following positions in state government:

(1) elected officials;

(2) county assessors and their chief deputy;

(3) officers and employees of the legislative branch;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, appointed by the legislature, or appointed by other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) teachers under the authority of the department of institutions;

(11) investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;

(12) four professional staff positions under the board of oil and gas conservation; ~~and~~

(13) assistant director for security of the Montana state lottery; and

(14) executive director and employees of the state compensation mutual insurance fund."

Section 40. Section 33-17-502, MCA, is amended to read:

"**33-17-502. Prohibition on holding out as consultant -- receiving fee.** (1) Any person not licensed as an insurance consultant in this state who identifies or holds himself out to be an insurance consultant without having been licensed as an insurance consultant under this part or any person who uses any other designation or title which is likely to mislead the public and holds himself out in any manner as having particular insurance qualifications other

than those for which he may be otherwise licensed or otherwise qualified is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(2) Any person not licensed as an insurance consultant with respect to the relevant kinds of insurance who receives any fee for examining, appraising, reviewing, or evaluating any insurance policy, annuity or pension contract, plan, or program or who shall make recommendations or give advice with regard to any of the above without first having been licensed by the commissioner as an insurance consultant is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(3) Nothing in this part applies to:

(a) licensed attorneys at law in this state acting in their professional capacity; OR

(b) an actuary or a certified public accountant who provides information, recommendations, advice, or services in his professional capacity if neither he nor his employer receives any compensation directly or indirectly on account of any insurance, bond, annuity or pension contract that results in whole or part from that information, recommendation, advice, or services; ~~or~~

~~(c) a duly licensed casualty insurance agent who accepts a fee from an insured for placement through the state compensation mutual insurance fund as provided in~~

~~33-18-212.~~"

Section 41. Section 33-18-212, MCA, is amended to read:

"**33-18-212. Illegal dealing in premiums -- improper charges for insurance.** (1) ~~No~~ A person ~~shall~~ may not willfully collect any sum as premium or charge for insurance, which insurance is not then provided or is not in due course to be provided (subject to acceptance of the risk by the insurer) by an insurance policy issued by an insurer as authorized by this code.

(2) ~~No~~ A person ~~shall~~ may not willfully collect as premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance and, as specified in the policy, in accordance with the applicable classifications and rates as filed with and approved by the commissioner; or in cases where classifications, premiums, or rates are not required by this code to be so filed and approved, such premiums and charges ~~shall~~ may not be in excess of or less than those specified in the policy and as fixed by the insurer. This provision ~~shall~~ may not be deemed to prohibit the charging and collection, by surplus lines agents licensed under chapter 2, part 3, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. It ~~shall~~ may not be deemed considered to prohibit the charging

and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy. ~~The provision of this subsection does not prohibit the collection from an insured of a placement fee, not to exceed 7 1/2% of the annual premium, for placement through the state compensation mutual insurance fund by a duly licensed casualty insurance agent. This placement fee is not a premium as defined in 33 15 102.~~

(3) Each violation of this section ~~shall be~~ is punishable under 33-1-104."

~~**Section 43.** Section 2 15 1702, MCA, is amended to read:~~

~~"2 15 1702. Division of workers' compensation insurance compliance head. (1) There is a division of workers' compensation insurance compliance within the department. The division head is an administrator appointed by the governor as are directors in accordance with 2 15 111.~~

~~(2) The division is allocated to the department for administrative purposes only as prescribed in 2 15 121. However, the division may hire its own personnel, and 2 15 121(2)(d) does not apply."~~

Section 42. Section 2-15-1014, MCA, is amended to read:

"2-15-1014. Office of workers' compensation judge -- allocation -- appointment -- salary. (1) There is the office of workers' compensation judge. The office is allocated to the department of ~~administration~~ labor AND INDUSTRY for administrative purposes only as prescribed in 2-15-121.

(2) The governor shall appoint the workers' compensation judge for a term of 6 years in the same manner provided by Title 3, chapter 1, part 10, for the appointment of supreme or district court judges. A vacancy ~~shall~~ must be filled in the same manner as the original appointment.

(3) To be eligible for workers' compensation judge, a person must:

(a) have the qualifications necessary for district court judges found in Article VII, section 9, of the Montana constitution;

(b) devote full time to the duties of workers' compensation judge and not engage in the private practice of law.

(4) The workers' compensation judge is entitled to the same salary and other emoluments as that of a district judge but ~~shall~~ must be accorded retirement benefits under the public employees' retirement system."

Section 43. Section 39-71-2501, MCA, is amended to read:

"39-71-2501. (Temporary) Definitions. As used in this

part, the following definitions apply:

(1) "Board" means the board of examiners created in 2-15-1007.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Employer" has the meaning set forth in 39-71-117.

(4) "Payroll" means the payroll of an employer for each of the calendar quarters ending March 31, June 30, September 30, and December 31, for all employments covered under 39-71-401.

(5) "State fund" means the state compensation MUTUAL insurance fund ~~referred to in 39-71-2301~~.

(6) "Tax" means the workers' compensation payroll tax provided for in 39-71-2503.

(7) "Tax account" means the workers' compensation tax account created by 39-71-2504. (Terminates June 30, 1991--sec. 10, Ch. 664, L. 1987.)"

NEW SECTION. **SECTION 44.** STATE FUND TO SUBMIT NOTICE OF COVERAGE WITHIN THIRTY DAYS -- PENALTY FOR FAILURE. (1) THE STATE FUND SHALL, WITHIN 30 DAYS AFTER THE ISSUANCE OF AN INSURANCE POLICY, SUBMIT TO THE ~~DIVISION~~ DEPARTMENT THE NOTICE OF COVERAGE STATING THE EFFECTIVE DATE OF THE POLICY INSURING THE EMPLOYER AND OTHER INFORMATION THE ~~DIVISION~~ DEPARTMENT REQUIRES.

(2) THE ~~DIVISION~~ DEPARTMENT MAY ASSESS A PENALTY OF NO

MORE THAN $200 AGAINST THE STATE FUND IF, AS A GENERAL BUSINESS PRACTICE, THE STATE FUND DOES NOT COMPLY WITH THE 30-DAY NOTICE REQUIREMENT.

NEW SECTION. **SECTION 45.** POLICY REMAINS IN EFFECT UNTIL CANCELED OR REPLACED -- TWENTY-DAY NOTIFICATION OF CANCELLATION REQUIRED. THE INSURANCE POLICY REMAINS IN EFFECT UNTIL CANCELED. CANCELLATION MAY TAKE EFFECT ONLY BY WRITTEN NOTICE TO THE NAMED INSURED AND TO THE ~~DIVISION~~ DEPARTMENT AT LEAST 20 DAYS PRIOR TO THE DATE OF CANCELLATION. HOWEVER, THE POLICY TERMINATES ON THE EFFECTIVE DATE OF A REPLACEMENT OR SUCCEEDING INSURANCE POLICY ISSUED TO THE INSURED. NOTHING IN THIS SECTION PREVENTS THE STATE FUND FROM CANCELING AN INSURANCE POLICY BEFORE A REPLACEMENT POLICY IS ISSUED TO THE INSURED.

SECTION 46. SECTION 33-2-119, MCA, IS AMENDED TO READ:

"33-2-119. Suspension or revocation for violations and special grounds. (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has:

(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;

(b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in another insurer.

In considering suspension or revocation, the commissioner shall consider all relevant factors, including whether:

(i) after the reinsurance transaction all parties will be in compliance with Montana law; and

(ii) the transaction will substantially reduce protection and service to Montana policyholders;

(c) failed to accept an equitable apportionment of assigned coverage as required by [section ~~13~~ 12].

(2) The commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) is in unsound condition or in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused

to pay proper claims arising under its policies, whether any such claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to such third person, or without just cause compels such insured or claimant to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or such an insured to secure full payment or settlement of such claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus lines insurer under part 3 of this chapter.

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."

SECTION 47. SECTION 37-72-101, MCA, IS AMENDED TO READ:

"37-72-101. Construction blasting restrictions -- license required -- definitions -- exemptions. (1) No person may engage in the practice of construction blasting unless

licensed or under the supervision of a person licensed as a construction blaster by the ~~workers'--compensation--division~~ DEPARTMENT.

(2) For the purposes of this chapter:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) ~~"division"---means---the---division---of--workers' compensation-division-~~insurance-compliance~~-of-the-department of--labor--and---industry---provided---for---in---2-15-1702;~~ "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND INDUSTRY;

(d) "explosive" has the meaning given in 50-38-101;

(e) "magazine" has the meaning given in 50-38-101.

(3) Nothing in this chapter applies to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the

private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection must comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under and implementing 82-4-231(10)(e)."

SECTION 48. SECTION 50-71-102, MCA, IS AMENDED TO READ:

"**50-71-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

(2) "Code" means a standard body of rules for safety formulated, adopted, and issued by the ~~division~~ DEPARTMENT under the provisions of this chapter.

(3) ~~"Division"---means---the---division---of--workers' compensation-~~insurance-compliance~~-of-the-department-of-labor and-industry-provided-for-in-2-15-1702;~~ "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND INDUSTRY.

(4) "Employee" and "worker" are defined as in

39-71-118.

(5) "Employer" is defined as in 39-71-117.

(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change."

SECTION 49. SECTION 50-73-102, MCA, IS AMENDED TO READ:

"50-73-102. Definitions. As used in this chapter, the following definitions apply:

(1) ~~"Division"---means---the---division---of--workers' compensation-insurance-compliance-of-the-department-of-labor and-industry-provided-for-in--2-15-1702~~ "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND INDUSTRY and the state coal mine inspectors employed by the ~~division~~ DEPARTMENT.

(2) "Excavations" and "workings" mean all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working places, whether abandoned or in use.

(3) "Gassy mine" means a mine is considered to be potentially gassy. The ~~division~~ DEPARTMENT may further define this term in its rules.

(4) "Mine" and "coal mine" mean all parts of the property of a mining plant under one management which contribute, directly or indirectly, to the mining or

handling of coal.

(5) "Mine examiner" means a person charged with the examination of the condition of the mine before the miners are permitted to enter it and who is commonly known as the "fire boss".

(6) "Mine foreman" means a person who is charged with the general direction of the underground work or both the underground work and the outside work of a coal mine and who is commonly known and designated as "mine boss".

(7) "Operator", as applied to the party in control of a mine under this chapter, means the person, firm, or body corporate which is the immediate proprietor as owner or lessee of the plant and, as such, is responsible for the condition and management thereof.

(8) "Shaft" means any vertical opening through the strata which is or may be used for the purpose of ventilation or escape or for hoisting or lowering of men or material in connection with the mining of coal.

(9) "Slope" and "drift" mean respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft."

SECTION 50. SECTION 39-1-103, MCA, IS AMENDED TO READ:

"39-1-103. Powers of department. (1) In discharging the duties imposed upon the department, the commissioner or his authorized representatives may administer oaths, examine

witnesses under oath, take depositions or cause same to be taken, deputize any citizen 18 years of age or older to serve subpoenas upon witnesses, and issue subpoenas for the attendance of witnesses before him in the same manner as for attendance before district courts.

(2) The commissioner may likewise cause to be inspected any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment.

~~(3)--Nothing--herein--contained--shall--in--any--manner confer--upon--the-commissioner-the-authority-to-interfere-in any-manner-with-the-conduct-of-the-matters-under-the-control of--the--workers'--compensation--division,--nor--shall---the commissioner--be--charged--with-the-duty-of-enforcing-any-of the-laws-of-the-state--pertaining--to--the--affairs--of--the workers'--compensation--division--or-with-the-enforcement-of the-safety-provisions-of-the-Workers'-Compensation-Act.~~

~~(4)~~(3) Nothing in this chapter applies to labor violations preempted by federal law or regulation."

SECTION 51. SECTION 39-71-207, MCA, IS AMENDED TO READ:

"**39-71-207. Merit system.** Employees of the ~~division, except-the-administrator,~~ department are included within the joint merit system if such inclusion is required for the receipt of federal funds by 29 CFR 1902.3(h) or by any other

federal law or regulation."

SECTION 52. SECTION 33-1-102, MCA, IS AMENDED TO READ:

"**33-1-102. Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs.** (1) No person shall transact a business of insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) No provision of this code shall apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of such corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of such organizations are authorized by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, ~~parts~~ part 21 ~~and 23~~, and related sections.

(6) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(7) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(8) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state whereby the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state whereby the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."

SECTION 53. SECTION 33-16-1005, MCA, IS AMENDED TO READ:

"**33-16-1005. Membership in rating organization**

required -- exception -- filings with commissioner. (1) Every insurer, ~~except the division of workers' compensation~~ including the state compensation mutual insurance fund, writing workers' compensation insurance in this state shall be a member of a workers' compensation rating organization. No insurer may, at the same time, belong to more than one rating organization with respect to such insurance.

(2) A rating organization shall file with the insurance commissioner every manual of classifications and rules and every rating plan and advisory manual rates, including every modification of the foregoing. Every such filing shall state the effective date thereof. Any insurer writing pursuant to compensation plan No. 2 shall adhere to the manual rules and classifications and rating plans of the rating organization of which it is a member and may adopt by reference, in whole or in part, the advisory manual rates filed under this section. Nothing in this section, however, requires adherence by any insurer to any rates established or published by any rating organization."

SECTION 54. SECTION 33-16-1011, MCA, IS AMENDED TO READ:

"**33-16-1011. Classification and rating committee -- membership -- term.** (1) There is a classification and rating committee.

(2) The committee is composed of five voting members,

consisting of:

(a) three representatives of private insurance carriers writing workers' compensation insurance in Montana. The members must reside in Montana and shall be appointed by the Montana commissioner of insurance.

(b) one licensed independent insurance agent who resides in Montana, appointed by the Montana commissioner of insurance; and

(c) one representative of the ~~division--of--workers' compensation~~ state compensation mutual insurance fund who is an employee of the ~~division~~ state fund and who ~~shall be~~ is appointed by the ~~administrator--of--the--division~~ executive director of the state fund.

(3) Each member shall hold office for a period of 3 years. Any appointee who fills the vacancy of a member whose term has not expired shall fill only the remaining term and may be reappointed for a full term.

(4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a) and (2)(b) above, established private organizations representing insurance carriers and independent insurance agents may submit names of individuals they recommend for appointments. The commissioner of insurance shall give consideration to such names submitted before appointments are made. However, the commissioner of insurance is not required to appoint any

person from the names submitted.

(5) The committee shall be funded from the operations budget of the rating organization. Committee members may, if they request, be paid their actual and necessary travel expenses."

SECTION 55. SECTION 19-3-1007, MCA, IS AMENDED TO READ:

"~~19-3-1007. Allowance for duty-related disability.~~ (1) The annual amount of retirement allowance payable to a member eligible for disability retirement for duty-related reasons and granted prior to July 1, 1977, is 50% of his final compensation. However, the annual amount of retirement allowance is 25% of final compensation for any period during which the member has been awarded ~~compensation--by--the~~ workers' compensation ~~division~~, whether such compensation is received in periodic payments or in a lump sum. The annual amount of retirement allowance reverts to 50% of final compensation at the end of such period.

(2) Any retired member receiving a retirement allowance on July 1, 1977, who has previously been granted a duty-related disability under provisions in effect on June 30, 1977, will be subject to the provisions of this section after July 1, 1977."

SECTION 56. SECTION 19-3-1002, MCA, IS AMENDED TO READ:

"**19-3-1002. Eligibility for disability retirement.** (1) Except as provided in subsection (2) and 19-3-1004, a member who is not eligible for service or early retirement but has completed 5 years of creditable service and has become disabled while in active service, as defined in 19-3-1001, is eligible for disability retirement.

(2) A member age 60 or older who has completed 5 years of creditable service and has had a duty-related accident forcing him to terminate his employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-related accident may conditionally waive his eligibility for a service retirement to be eligible for disability retirement. The waiver is effective only upon approval by the board of his application for disability retirement. The board shall determine whether a member has become disabled under the provisions of 19-3-1003. The board may request any information on file with the ~~workers' compensation division~~ state compensation mutual insurance fund concerning the duty-related accident. If no information is available, the board may request and the ~~division~~ state fund shall provide an investigative report on the disabling accident."

SECTION 57. SECTION 19-3-1202, MCA, IS AMENDED TO READ:

"**19-3-1202. Amount of death benefit.** The amount of

death benefit is the sum of (1), (2), and (3) as follows:

(1) the member's accumulated contributions;

(2) an amount equal to one-twelfth of the compensation received by the member during the last 12 months of such compensation multiplied by the smaller of six or the number of years of his creditable service; provided, however, that this portion of the death benefit is not payable if the board receives a certification from the ~~workers' compensation division of the state of Montana~~ state compensation mutual insurance fund that it is paying compensation because the member's death resulted from injury or disease arising out of or in the course of employment; and

(3) the accumulated interest on the amounts in subsections (1) and (2) of this section to the first day of the month in which the benefit is paid."

SECTION 58. SECTION 19-13-601, MCA, IS AMENDED TO READ:

"**19-13-601. Deduction remitted to firemen's association -- member's contributions.** (1) Each employer shall retain from the monthly compensation of each active member a sum equal to 1% of his monthly compensation for his services as a firefighter and shall remit this amount on a monthly basis to the Montana state firemen's association for the payment of premiums on a group life and accidental death

and dismemberment insurance policy for members and to defray expenses incurred by the association when representing members of the plan.

(2) The member's contribution to the retirement system for each active member is 6% of his monthly compensation.

(3) If a member receives compensation under the provisions of the Workers' Compensation Act, Title 39, chapter 71, the amount received must be included as part of his monthly compensation for purposes of determining contributions and service credits under the retirement system. Contributions made under this section, 19-13-604, and 19-13-605 must be based on the total compensation received by the member from his employer and from ~~the~~ workers' compensation ~~division~~ during the period of disability.

(4) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, as amended and applicable on July 1, 1987, shall pick up and pay the contributions which would be payable by the member under subsection (2) for service rendered after June 30, 1987.

(5) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of

the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(6) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's monthly compensation as defined in 19-13-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

NEW SECTION. **Section 59.** Repealer. Sections 2-15-1702, 39-71-2301, 39-71-2302, 39-71-2304 through 39-71-2306, and 39-71-2324, MCA, are repealed.

NEW SECTION. **Section 60.** Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **Section 61.** Codification instruction. (1) [Sections 1, 2, and 4 through ~~12~~ 11, 44, AND 45] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 1, 2, and 4 through ~~12~~ 11, 44, AND 45].

(2) [Section 3] is intended to be codified as an integral part of Title 2, chapter 15, part 10, and the

provisions of Title 2, chapter 15, part 10, apply to [section 3].

(3) [Section ~~13~~ 12] is intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [section ~~13~~ 12].

NEW SECTION. **Section 62.** Reorganization procedure. (1) The provisions of sections ~~2-15-131~~ 2-15-132 through 2-15-137 govern the creation of the state compensation mutual insurance fund and the transfer of the various functions contained in [this act] from the state ~~workers'~~ compensation INSURANCE fund to the state compensation mutual insurance fund.

(2) IT IS INTENDED THAT CURRENT EMPLOYEES OF THE DIVISION OF WORKERS' COMPENSATION WHOSE FUNCTIONS ARE TRANSFERRED TO THE STATE COMPENSATION MUTUAL INSURANCE FUND SHALL RETAIN EMPLOYMENT RIGHTS CONSISTENT WITH THEIR POSITIONS AT THE TIME OF TRANSFER.

NEW SECTION. **Section 63.** Implementation. (1) The governor shall by executive order implement the provisions of [this act].

(2) The governor may by executive order assign to the state compensation mutual insurance fund, in a manner consistent with [this act], functions allocated to the workers' compensation state fund provided for in Title 39, chapter 71, part 23, by the 51st legislature and not

transferred by [this act].

NEW SECTION. **SECTION 64.** NAME CHANGE -- CODE COMMISSIONER INSTRUCTION. (1) IN THE PROVISIONS OF THE MONTANA CODE ANNOTATED, THE TERMS "DIVISION OF WORKERS' COMPENSATION", "DIVISION", AND "WORKERS' COMPENSATION DIVISION", MEANING THE DIVISION OF WORKERS' COMPENSATION, ARE CHANGED TO "DEPARTMENT OF LABOR AND INDUSTRY" OR "DEPARTMENT", MEANING THE "DEPARTMENT OF LABOR AND INDUSTRY".

(2) THE CODE COMMISSIONER SHALL DESIGNATE, IN A MANNER CONSISTENT WITH [THIS ACT], WORKERS' COMPENSATION INSURANCE REGULATORY FUNCTIONS ALLOCATED TO THE DIVISION OF WORKERS' COMPENSATION BY THE 51ST LEGISLATURE TO THE DEPARTMENT OF LABOR AND INDUSTRY THAT ARE NOT SO DESIGNATED BY [THIS ACT].

(3) WHEREVER IT APPEARS IN 39-71-205, 39-71-222 THROUGH 39-71-224, 39-71-613, 39-71-902, 39-71-904, 39-71-910, OR IN LAW ENACTED BY THE 51ST LEGISLATURE, THE CODE COMMISSIONER IS DIRECTED TO CHANGE THE TERM "ADMINISTRATOR" OR "HIS" TO "DEPARTMENT", MEANING THE DEPARTMENT OF LABOR AND INDUSTRY.

NEW SECTION. **Section 65.** Effective dates. (1) [Sections 3, 7, 50 ~~54,--55~~ 39, 60 THROUGH 64, and this section] are effective on passage and approval.

(2) [Sections 1, 2, 4 through 6, and 8 through 38, AND 40 THROUGH 49 ~~53~~ 59] are effective upon signing of the

executive order under [section ~~50~~ 55 63] or on ~~October--1,~~ ~~1989~~ JANUARY 1, 1990, whichever occurs earlier.

-End-